

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF NEW MEXICO

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 vs. NO: CR-15-4268 JB

6 ANGEL DELEON, et al.,

7 Defendants.

8 VOLUME 5

9 Transcript of Jury Trial before The Honorable  
10 James O. Browning, United States District Judge, Las  
11 Cruces, Dona Ana County, New Mexico, commencing on  
12 February 2, 2018.

13 For the Plaintiff: Ms. Maria Armijo, Mr. Randy  
14 Castellano, Mr Matthew Beck

15 For the Trial 1 Defendants: Ms. Amy Jacks,  
16 Mr. Richard Jewkes, Ms. Theresa Duncan, Mr. Marc  
17 Lowry, Ms. Carey Bhalla, Mr. Bill Maynard, Mr. Ryan  
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1 THE COURT: All right. Good morning,  
2 everyone. I appreciate everybody being here and on  
3 time and ready to go. Let me see if there is  
4 anything anybody needs to bring up with the Court  
5 before we start this morning.

6 Mr. Maynard, looks like you're at the  
7 microphone.

8 MR. MAYNARD: Thank you, Your Honor. I  
9 just wanted to bring to the Court's attention I  
10 filed a motion in limine last night. This relates  
11 to the testimony of Javier Rubio when he comes up to  
12 testify. I think the Government is going to try to  
13 offer in some information or some statements perhaps  
14 under the co-conspiracy exception to hearsay, and  
15 yet the declarant -- there is no independent showing  
16 the declarant is a co-conspirator and there is no  
17 showing that it's in furtherance of the conspiracy.  
18 This is the new information relating to an  
19 interview -- coming out of an interview last week,  
20 just days before jury selection, and we just learned  
21 about it, of course, basically the day of the jury  
22 selection itself.

23 THE COURT: I did have some new briefs  
24 this morning, but I'm not sure I've seen that one.  
25 Let's see. Okay. I do have yours. It's 1733?

1 MR. MAYNARD: It doesn't have to be  
2 addressed right now, Your Honor, but I think it's  
3 critical that it be addressed before Rubio takes the  
4 stand.

5 THE COURT: Is Rubio coming up today?

6 MR. BECK: He is, Your Honor, and the  
7 United States filed a response brief, which is 1735.  
8 I don't know if you've got it in your pile there.

9 I know you're a multi-tasker, so I'll keep  
10 talking, Your Honor. There will be one witness  
11 between Mr. Armijo finishing this morning and Mr.  
12 Rubio coming on this morning.

13 THE COURT: Okay. I now have both of  
14 y'all's briefs in front of me. Are you going to try  
15 to get his statements in as a co-conspirator  
16 statement?

17 MR. BECK: Yes, Your Honor, our response  
18 brief outlines that we expect Mr. Rubio to testify  
19 that Juan Mendez, who told him the statement, was a  
20 leader in one of the pods, as was Alex Munoz and  
21 Carlos Herrera. The statement was part of the  
22 conspiracy to murder Javier Molina, because since it  
23 was a hit authorized by the SNM, sent down from Pup,  
24 and it was going to be a serious hit which would  
25 place the pods on lockdown, all of the leaders in

1 the pods had to sign off on it, had to approve of  
2 it. It furthered the conspiracy, because once it  
3 was a legitimate hit, sent down from the top, no SNM  
4 member could then drop a kite or respond to it or  
5 give any information. So it was in furtherance of  
6 the conspiracy because it helped prevent law  
7 enforcement detection of the conspiracy. That's all  
8 outlined in our response, 1735.

9 THE COURT: Let me take a look at your  
10 motion, Mr. Maynard, and then I'll look at the  
11 response and see if we need additional argument on  
12 it.

13 MR. MAYNARD: In addition, Your Honor, I  
14 understand that the declarant of the -- the  
15 declarant who states the declaration, the assertion  
16 that the Government says is a co-conspirator  
17 statement, that declarant is on the Government's  
18 witness list. It would be more appropriate if, in  
19 fact, that person is a co-conspirator that that  
20 person come and testify rather than have it come in  
21 secondhand or thirdhand through Mr. Rubio. And  
22 there is just -- all we have is Rubio's assertion.  
23 We don't have any independent evidence that this  
24 declaration comes from a co-conspirator, and it  
25 seems to be pure narrative anyway. We can revisit

1 this issue when Mr. Rubio comes in.

2 THE COURT: All right. Let me take a look  
3 at it. All right. I think the jurors are all here.

4 MS. JACKS: I had one thing I want to give  
5 the Court a heads-up on, as well. I think we have  
6 an issue with David Calbert. That's the second  
7 Government informant. And we got a report yesterday  
8 that says in a recent interview Mr. Calbert now has  
9 a story about Rudy Perez making a statement to him  
10 regarding giving his walker. So I do have some  
11 argument regarding that. It's the issue of the  
12 admissibility of the Perez statements at a joint  
13 trial.

14 THE COURT: Is Calbert going to be today  
15 as well?

16 MS. JACKS: That's what I'm told.

17 MR. BECK: He may be. He's our last  
18 witness to present today, so we may get to him this  
19 afternoon.

20 THE COURT: Are these late James  
21 disclosures?

22 MR. BECK: I have heard Mr. Calbert's  
23 statement. When he disclosed it, I don't know. But  
24 I certainly don't disagree with Ms. Jacks that he  
25 had new ones that we disclosed on Sunday, so this

1 very well could be one of those new ones we  
2 disclosed on Sunday.

3 MS. JACKS: I actually got the 302 last  
4 night, I think, or yesterday afternoon in court.

5 MR. BECK: Right.

6 MS. JACKS: You disclosed the fact that  
7 the statement was made on Sunday. We got the 302  
8 yesterday.

9 MR. BECK: I think the 302 is disclosed in  
10 discovery yesterday. I attached the 302 in the  
11 email that I sent out on Sunday. So I think  
12 we're -- I think Ms. Jacks is right. I think we're  
13 both right. We can agree to disagree.

14 MS. JACKS: It's a new statement, same  
15 issue.

16 THE COURT: Now, the Calbert statement is  
17 not coming in as a co-conspirator. It's coming in  
18 in that other letter?

19 MR. BECK: That's right. It may not. It  
20 may not be in the other letter because it was  
21 attached as a 302 to the first letter. So Timothy  
22 Martinez and David Calbert, we received their 302s  
23 before we disclosed them on Sunday. So it very well  
24 may not be in that letter. I have a copy of it  
25 here. I don't know if the Court has it. I have a



1 copy of that 302 here. It's not coming in as --  
2 I'll give it to you right now. It's not coming in  
3 as a co-conspirator statement. It's coming in as an  
4 admission by Mr. Perez.

5 MS. JACKS: I would hope the issue about  
6 whether it's coming in is still under consideration  
7 and debate.

8 MS. FOX-YOUNG: Your Honor, may I make a  
9 brief statement about it?

10 THE COURT: Let me get that 302 so I can  
11 be looking at it.

12 MS. FOX-YOUNG: Judge, I can show you my  
13 copy, if I may approach.

14 THE COURT: You may.

15 MS. FOX-YOUNG: Your Honor, I think it  
16 begins with Bates 41860. This is an August 2017  
17 report and there is absolutely no reason why this  
18 wasn't disclosed earlier. We're seeing this over  
19 and over and over again. I mean, at some point the  
20 Judge has got to cut -- the Court has got to cut the  
21 Government off in terms of these statements,  
22 particularly given the problems with  
23 cross-admissibility. But these are very  
24 incriminating reports that the Government has hung  
25 onto for months and months. And I think it might be

1 the third page, Your Honor, if you're looking for --  
2 it's under Molina, and I --

3 THE COURT: Well, given this is an August  
4 28, 2017, how come that wasn't produced earlier, Mr.  
5 Beck?

6 MR. BECK: So that's what I was saying my  
7 memory was -- I didn't remember that particular  
8 statement. The August -- that Bates-numbered  
9 document that you're looking at is not the one I was  
10 thinking of. That was disclosed with Jencks. That  
11 would have been, I think, January 12 would have been  
12 the disclosure of that date.

13 THE COURT: The one I'm looking at?

14 MS. JACKS: Right. I think there is a  
15 separate report which was the one I was talking  
16 about. It's --

17 THE COURT: Hold on. Ms. Jacks, that's  
18 very inappropriate. Nobody is talking to you right  
19 now.

20 Now, this document that Ms. Fox-Young has  
21 given me -- this one was Jencks material?

22 MR. BECK: That's correct, Your Honor.

23 THE COURT: So you've had this, then, for  
24 three or four weeks, Ms. Fox-Young?

25 MS. FOX-YOUNG: Your Honor, we may have

1 had that one for two weeks. There is a subsequent  
2 report that expounds on this, and is actually  
3 exculpatory with regard to Calbert's views of any  
4 alleged hit, which came out, I think, on Tuesday.

5 THE COURT: When was the interview done on  
6 that?

7 MS. FOX-YOUNG: That interview was January  
8 12. But Your Honor, it's hard to keep up. We've  
9 had thousands of pages over the last couple of weeks  
10 and even over the last few days. But I don't think  
11 that there is a reasonable explanation for holding  
12 an August report until January. Your Honor can see  
13 there's a whole lot more than Jencks in that report.

14 THE COURT: Well, I can't see that that  
15 quickly, but it was produced as the Jencks material.

16 Okay, well, let me take a look at it. Is  
17 there another 302 that I need to be looking at?

18 MR. BECK: There is. I have a copy of  
19 that, Your Honor.

20 THE COURT: Do you have one as well?

21 MS. FOX-YOUNG: Your Honor, would it be  
22 okay if I just produce clean copies for you? I have  
23 my notes on these. I can give you copies of both  
24 302s. Thank you, Judge.

25 THE COURT: Is the jury lined up?

1 Let me have those 302s. Now I don't have  
2 any, so I'm standing here without any 302s. So give  
3 me the 302s that I can look at.

4 MS. BHALLA: We were going to ask if we  
5 can provide some, as well, Your Honor.

6 THE COURT: Let me have the 302s that I  
7 want. I don't just need any 302. I need the 302s I  
8 asked for.

9 MS. FOX-YOUNG: Mr. Beck has them, Your  
10 Honor.

11 THE COURT: Okay. And are those the 302s  
12 you wanted me to see, Ms. Jacks?

13 MS. JACKS: I don't know what was  
14 provided.

15 THE COURT: What is it that you were going  
16 to --

17 MS. JACKS: I was referencing Bates 51474.  
18 It's a two-paragraph 302.

19 MR. BECK: Is it the 302 dated 1/28/2018?

20 MS. JACKS: Mine says 1/29.

21 MR. BECK: 1/29.

22 THE COURT: Who was crossing Mr. Armijo  
23 when we ended for the evening? You, Ms. Duncan?

24 What else do you want to say on the 302?  
25 I'll let you talk about it in a minute.

1 All rise.

2 (The jury entered the courtroom.)

3 THE COURT: All right. Everyone be  
4 seated. Good morning, everyone. I appreciate  
5 everybody being back ready to go and on time. I  
6 appreciate counsel doing it as well. Happy Friday.  
7 Groundhog Day. Does it feel like Groundhog Day yet?

8 I appreciate the way y'all have gone about  
9 your task. You've been a good bunch to work with,  
10 and we'll try to get a good day's worth of work in  
11 today and let you go for the weekend.

12 All right, Mr. Armijo, if you wish to  
13 return to the witness box this morning, I'll remind  
14 you that you're still under oath.

15 Ms. Duncan, I think you were  
16 cross-examining, recross of Mr. Armijo.

17 MS. DUNCAN: Thank you, Your Honor.

18 THE COURT: Ms. Duncan.

19 MANUEL JACOB ARMIJO,  
20 after having been previously duly sworn under  
21 oath, was questioned, and continued testifying as  
22 follows:

23 CONTINUED RECROSS-EXAMINATION

24 BY MS. DUNCAN:

25 Q. I just have a very few questions. If I

1 could see Government's Exhibit 695, please.

2 Mr. Armijo, I'm showing you what was  
3 admitted yesterday as Government's Exhibit 695. I'm  
4 on the second page, and I just wanted to ask you  
5 about this paragraph 6. Yesterday Mr. Castellano  
6 was talking to you about the last sentence, that you  
7 understood that ultimately the decision whether to  
8 depart downward from the 20 years was up to the  
9 judge; correct?

10 A. Yes.

11 Q. But before we get to that point, the  
12 Government has to file its motion to seek a downward  
13 departure; correct?

14 A. Yes.

15 Q. And you understand that the decision  
16 whether to file that motion is completely up to the  
17 people at this table?

18 A. Correct.

19 MS. DUNCAN: No more questions, Your  
20 Honor.

21 THE COURT: Thank you, Ms. Duncan.

22 Mr. Castellano, do you have redirect?

23 MR. CASTELLANO: Your Honor, may we  
24 approach?

25 THE COURT: You may.

1 (The following proceedings were held at  
2 the bench.)

3 MR. CASTELLANO: We will be done with the  
4 witness today.

5 THE COURT: Is the defense ready to  
6 proceed with the additional statements we discussed  
7 yesterday or --

8 MS. DUNCAN: No.

9 THE COURT: Do you have any more  
10 questions?

11 MR. CASTELLANO: No, I'll just reserve.

12 MS. DUNCAN: Thank you.

13 (The following proceedings were held in  
14 open court.)

15 THE COURT: All right. Mr. Armijo, you  
16 may step down. You'll be subject to recall, so  
17 you'll need to stay out of the courtroom while the  
18 trial proceedings are ongoing. Thank you for your  
19 testimony.

20 MR. CASTELLANO: May Mr. Armijo leave the  
21 trial for now? I know he's subject to recall, but I  
22 don't think he'll be recalled this week. Is that  
23 okay with everyone?

24 MS. DUNCAN: That's fine, Your Honor.

25 THE COURT: I don't see any problem with

1 that. You can leave the courthouse, but you will be  
2 subject to recall.

3 All right. Ms. Armijo, does the  
4 Government have its next witness or evidence?

5 MS. ARMIJO: Yes, Your Honor, the United  
6 States will call Antonio Palomares.

7 THE COURT: Mr. Palomares, if you'll come  
8 up and stand next to the witness box on my right,  
9 your left, before you're seated, my courtroom  
10 deputy, Ms. Standridge, will swear you in.

11 ANTONIO PALOMARES,  
12 after having been first duly sworn under oath,  
13 was questioned and testified as follows:

14 THE CLERK: Please be seated. State and  
15 spell your name for the record.

16 THE WITNESS: Antonio Palomares.  
17 A-N-T-O-N-I-O. P-A-L-O-M-A-R-E-S.

18 THE COURT: Mr. Palomares, Ms. Armijo.

19 MS. ARMIJO: Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY MS. ARMIJO:

22 Q. Sir, where are you employed?

23 A. I'm employed by the New Mexico State  
24 Police.

25 Q. And what is your current position?



1           A.     I'm a sergeant with the Investigations  
2 Bureau.

3           Q.     And how long have you been with State  
4 Police?

5           A.     Eleven years.

6           Q.     And what different positions have you held  
7 other than sergeant?

8           A.     I initially started as an officer in  
9 uniform, and then I went to the Investigations  
10 Bureau as an agent for three years. And I have been  
11 a sergeant for Investigations for one year.

12          Q.     And when did you first join the  
13 Investigations Bureau?

14          A.     That was January 1st, 2012. I'm sorry,  
15 2014.

16          Q.     Now, what does the Criminal Investigation  
17 Bureau do?

18          A.     We are responsible for handling any type  
19 of felony investigations, from rapes, homicides, any  
20 type -- basically any type of felony investigations  
21 that uniform would not handle.

22          Q.     And what areas do you cover?

23          A.     Now I'm assigned to a different section.  
24 I'm assigned to work property crimes and narcotics  
25 investigation.

1 Q. Okay. Back in 2014, what area were you  
2 assigned to?

3 A. At the time I was handling homicides,  
4 rapes, child abuse cases.

5 Q. Now, state police, do you have different  
6 divisions within the state, or do you cover the  
7 whole state? How does that work?

8 A. Oh, in the Las Cruces area we handle five  
9 counties, which is Hidalgo County, Dona Ana County,  
10 Sierra County, Luna County.

11 Q. And where do you -- specifically as to the  
12 Southern New Mexico Correctional Facility, does  
13 state police handle any investigations out of there?

14 A. Yes, we do.

15 Q. And why is that?

16 A. It's a state facility.

17 Q. So would state police, because it's a  
18 state facility, be the -- respond to serious  
19 incidents out at the prisons?

20 A. Correct. We handle the state cases, being  
21 a state facility and we're state employees.

22 Q. Do you recall if, on March 7, 2014, you  
23 were called out to investigate an incident at  
24 Southern?

25 A. I do.

1 Q. Can you tell us about that?

2 A. I received a call from my supervisor at  
3 the time, Randy Larcher. He advised me there was a  
4 homicide at Southern New Mexico Correctional  
5 Facility and I was going to be assigned as a case  
6 agent.

7 Q. And what is a case agent?

8 A. Basically the case agent is the one that  
9 oversees the whole investigation.

10 Q. How long had you been with the Criminal  
11 Investigations Bureau at that time, if you began in  
12 January?

13 A. At that time three months.

14 Q. So what did you do after you received the  
15 call?

16 A. I started going to the location, along  
17 with different agents with the New Mexico State  
18 Police. I arrived on scene and I made contact with  
19 correctional officers, personnel. I was briefed on  
20 the situation. I was advised that an inmate by the  
21 name of Javier Molina had been stabbed, and he was  
22 already transported to Memorial Medical Center in  
23 Las Cruces.

24 Q. Now, I know that Corrections spoke to you  
25 and gave you a briefing; is that correct?

1 A. Correct.

2 Q. Now, was it just you, or did others  
3 respond?

4 A. It was other agents, as well.

5 Q. And how does it normally work? You're a  
6 case agent, so you're in charge of it. What happens  
7 with other people? Are they given assignments?

8 A. Yes. Basically, they're assigned to  
9 different types of investigations, from interviews  
10 to contacting evidence, from going to the hospital,  
11 going to the autopsy in Albuquerque. So each agent  
12 at the time, depends on the situation, they're  
13 assigned to some type of investigative --

14 Q. Role?

15 A. -- role.

16 Q. Now, as case agent, what was it that you  
17 did?

18 A. Well, at this time I arrive on scene and I  
19 was briefed on the situation, and we came up with a  
20 plan that the whole scene needed to be processed for  
21 evidence. And once the scene was processed, at the  
22 same time we were also attempting to obtain  
23 statements from a possible witness in the pod,  
24 basically different inmates. We also spoke to  
25 different correctional officers. So that was my

1 role, basically trying to find what was going on by  
2 speaking to different inmates and correctional  
3 officers.

4 Q. Now, as part of it, I think you mentioned  
5 that there would be somebody that would be in charge  
6 of the scene, and who was that?

7 A. There is a different section for state  
8 police. There our crime scene -- it's called a  
9 crime scene team, which in this case was two agents,  
10 one being the supervisor or manager on scene; and  
11 the second agent, they are in charge of processing  
12 evidence, which it was Norman Rhoades.

13 Q. Do they also take pictures?

14 A. Yes.

15 Q. So in addition to that, you indicated that  
16 there were agents that went to the hospital; is that  
17 correct?

18 A. Correct.

19 Q. And what is the process as far as -- at  
20 some point, did you learn whether or not Mr. Molina  
21 had survived the attack or whether or not he was  
22 deceased?

23 A. When I arrived on scene to that location,  
24 I received a call from the agent, John Butter  
25 (phonetic). He's the one that responded to Memorial

1 Medical Center. He advised that the inmate had  
2 passed away.

3 Q. And so at that point was it treated like a  
4 homicide investigation?

5 A. Correct, yes.

6 Q. What is the normal process for -- where  
7 was Mr. Molina taken?

8 A. He was taken to Memorial Medical Center.

9 Q. And from there, what is the process when  
10 somebody is at a hospital or at a scene? You  
11 mentioned the medical examiner. What happened?

12 A. Correct. So basically, from the scene, he  
13 was transported to Memorial Medical Center. From  
14 Memorial Medical Center he was transported to  
15 Albuquerque for an autopsy. Basically, they -- the  
16 medical personnel at the autopsy, they try to find  
17 out the reason for -- basically they do their  
18 investigation on what happened to that person based  
19 on the injuries.

20 Q. Was that something that was assigned to  
21 another agent to do?

22 A. Yes. That was an Albuquerque agent from  
23 the New Mexico State Police. He assisted the  
24 autopsy in Albuquerque.

25 Q. Do you recall approximately what time you

1 all arrived at Corrections and in general when this  
2 briefing occurred before you started processing the  
3 scene and doing your investigation?

4 A. I received the call probably approximately  
5 5:17 p.m. I was in Deming at the time on a  
6 different case. So I traveled to Las Cruces, so I  
7 arrived on scene probably around 6:30, maybe, p.m.

8 Q. Now, were you given a videotape that  
9 night?

10 A. Yes, I was.

11 Q. And did Corrections assist you with trying  
12 to set up interviews?

13 A. Yes.

14 Q. And what -- and I don't want the results  
15 of interviews, like what people said, but in  
16 general, can you tell us what types of people you  
17 interviewed that initial evening?

18 A. That initial evening we interviewed --  
19 myself and other agents, we interviewed 10 inmates  
20 and probably two or three correctional officers.

21 Q. And was it a late night?

22 A. Yes.

23 Q. Were you there for a while?

24 A. Yes, it was already March 8. It was  
25 probably 2:00 or 3:00 in the morning.

1 Q. When you left the scene?

2 A. When we started interviewing inmates.

3 Q. Okay. When you started interviewing  
4 inmates. All right. Now, as a result of the  
5 investigation, did you have any arrests that you  
6 made immediately?

7 A. Not at that time, no.

8 Q. Okay. Did you have any suspects at that  
9 time?

10 A. I did.

11 Q. And why was the decision made to not make  
12 any immediate arrests?

13 A. Well, we needed to follow up with the  
14 investigation and complete an investigation and  
15 speak to the district attorney's office in Las  
16 Cruces. They are in charge of proving any type of  
17 felony cases.

18 Q. Was there any concern on your part that  
19 any suspects would be on the streets?

20 A. No, but I spoke to correctional officers,  
21 and at that time nobody was coming in within the  
22 next couple of weeks.

23 Q. Now, did you continue on with your  
24 investigation?

25 A. I did.



1 Q. After that initial day?

2 A. Yes.

3 Q. And what sort of things did you do?

4 A. I went back to the Corrections, Southern  
5 on March 8 -- I'm sorry, March 10th. I was advised  
6 by correctional officers that different inmates  
7 wanted to speak to state police in reference to  
8 Javier Molina's incident. At that time, that's why  
9 myself and other agents, we responded back to the  
10 location.

11 Q. Now, and again this is kind of a general  
12 question. I'm not asking for anything specific that  
13 was said, but can you tell the jury about, in  
14 general, the kind of response you got after the  
15 first night of interviews? I mean, were they very  
16 productive from inmates?

17 A. Not at all. Each interview lasted between  
18 two to five minutes. None of the inmates at that  
19 time provided any type of information that was going  
20 to help us with the investigation.

21 Q. Were you working with any particular unit  
22 of corrections?

23 A. Yes, I was. I was working with -- it's  
24 called STIU, Security Threat Intelligence Unit.

25 Q. And how were you working with STIU?

1           A.     Because they are the ones in charge of --  
2     I believe they're the ones in charge of any type of  
3     gangs or any type of big incidents at the facility.

4           Q.     Were you investigating this as a  
5     gang-related homicide?

6           A.     Yes.   Initially, I was advised that the  
7     incident victim was Sindicato de Nuevo Mexico, which  
8     I learned there at the facility it's a gang here in  
9     New Mexico.

10          Q.     And so were you treating it -- in addition  
11     to as a homicide, were you also looking at it at the  
12     gang angle?

13          A.     Not at that time.   I was most concerned in  
14     handling the investigation and who did it and bring  
15     those people in to justice.

16          Q.     Now, at some point did you get permission  
17     from the DA's office to file charges against  
18     persons?

19          A.     I did.

20          Q.     And who was initially charged by the  
21     State?

22          A.     Inmate Jerry Armenta, inmate Jerry  
23     Montoya, inmate Mario Rodriguez.

24          Q.     And what were they charged with?

25          A.     Mario Rodriguez was charged with

1 conspiracy and having a weapon in a facility,  
2 correctional facility. Jerry Armenta and Jerry  
3 Montoya, they were charged with -- I believe it was  
4 a first-degree murder.

5 Q. Now, in addition to charging people, did  
6 you continue your investigation, such as conducting  
7 DNA search warrants?

8 A. I did. I requested DNA search warrants,  
9 and eventually I served four inmates with search  
10 warrants, DNA search warrants.

11 Q. And who did you serve those on?

12 A. It was the same inmates: Jerry Armenta,  
13 Jerry Montoya, Mario Rodriguez, and Timothy  
14 Martinez.

15 Q. What was that based on? Why did you pick  
16 those individuals to do the DNA swabs on?

17 A. Those are the people that I was able to  
18 see on video committing the -- or taking action on  
19 the homicide.

20 Q. Now, was the case pending with the State  
21 for some time?

22 A. Yes.

23 Q. And at some point did you learn anything  
24 as far as somebody that was charged that wanted to  
25 cooperate?

1 A. Correct, I did.

2 Q. And who did you learn wanted to cooperate?

3 A. At the time I received a call from  
4 correctional officers in Santa Fe advising me that  
5 inmate Jerry Armenta wanted to provide information  
6 to law enforcement, that he wanted to speak to the  
7 case agent.

8 Q. And eventually, did you and other people  
9 go and interview him?

10 A. Yes.

11 Q. Did he have an attorney at the time? He  
12 was pending charges; correct?

13 A. I believe so.

14 Q. Now when was that that you spoke to Mr.  
15 Armenta, approximately, if you can recall?

16 A. That was in October of 2015.

17 Q. Now, at some point in 2015, did you learn  
18 or were you contacted by the FBI in reference to  
19 this murder?

20 A. I was.

21 Q. And did you, after that point, work in  
22 connection with the FBI in reference to this  
23 investigation?

24 A. Correct, I did.

25 Q. Now, up until you spoke to Jerry Armenta,

1 any of the other people that were charged, did they  
2 cooperate, meaning -- we know that Mario Rodriguez,  
3 Jerry Armenta, and Jerry Montoya were initially  
4 charged by the State; correct?

5 A. Yes, ma'am.

6 Q. Other than Jerry Armenta, when the case  
7 was charged by the State, did any of the other two  
8 decide they wanted to cooperate?

9 A. No, ma'am.

10 Q. Now, did the State eventually dismiss  
11 their charges?

12 A. Yes.

13 Q. And why was that?

14 A. At that time the United States  
15 Attorneys -- they adopted the case. So for the best  
16 interests, the district attorney for the State --  
17 they dismissed the case, because inmates were going  
18 to be charged at the federal level.

19 MS. ARMIJO: And if I may just have a  
20 moment, Your Honor?

21 THE COURT: You may.

22 MS. ARMIJO: I pass the witness, Your  
23 Honor.

24 THE COURT: Thank you, Ms. Armijo. Any of  
25 the defendants have cross-examination of Mr.

1 Palomares?

2 MR. VILLA: Yes, Your Honor.

3 THE COURT: All right. Mr. Villa.

4 CROSS-EXAMINATION

5 BY MR. VILLA:

6 Q. Good morning, Agent.

7 A. Good morning.

8 Q. And I apologize. You're no longer with  
9 the state police, are you?

10 A. I'm still employed, sir.

11 Q. Is it Agent Palomares? Is that the right  
12 term?

13 A. Sergeant.

14 Q. I knew I needed to apologize. Sergeant  
15 Palomares, let me go right to where you left off.  
16 You testified that the state district attorney's  
17 office here in Las Cruces dismissed the case against  
18 Jerry Armenta, Jerry Montoya, and Mario Rodriguez,  
19 correct?

20 A. Yes, sir.

21 Q. They did that because the U.S. Attorney's  
22 Office adopted the case; correct?

23 A. Yes, sir.

24 Q. And are you aware now that all three of  
25 those men are cooperating with the U.S. Attorney's

1 Office?

2 A. I know some inmates, yes.

3 Q. All three of those men I just named are  
4 cooperating with the U.S. Attorneys, aren't they?

5 A. I'm not sure.

6 Q. So Jerry Montoya and Jerry Armenta were  
7 charged in state district court by the district  
8 attorney's office here in Las Cruces, I think you  
9 said with first-degree murder; right?

10 A. I believe so, yes, sir.

11 Q. First-degree murder carries a life  
12 sentence in the state of New Mexico?

13 A. I believe so.

14 Q. So when those charges got dismissed, they  
15 weren't facing a life sentence anymore, were they?

16 A. I'm not sure. I don't work for the  
17 district attorney's office.

18 Q. You took the DNA from those three men  
19 because you saw them committing a homicide on video;  
20 correct?

21 A. I took DNA from four inmates.

22 Q. I apologize. So you took DNA from those  
23 three men that we just talked about: Jerry Armenta,  
24 Jerry Montoya and Mario Rodriguez; correct?

25 A. Yes.

1 Q. And who was the fourth?

2 A. Timothy Martinez.

3 Q. And Timothy Martinez was also seen by you  
4 on video participating in the homicide?

5 A. He was a suspect.

6 Q. He was a suspect. Based on what you saw  
7 on video?

8 A. Correct.

9 Q. The other three men were suspects based on  
10 what you saw on video?

11 A. Yes, sir.

12 Q. Do you know that Timothy Martinez is also  
13 cooperating with the United States Attorney's  
14 Office?

15 A. I'm not sure.

16 Q. Let me ask you a little bit about that  
17 video. I realize that the Government didn't play  
18 that.

19 MR. VILLA: But Your Honor, I'd like to  
20 admit as evidence a copy of the video which is  
21 identified as Defense Exhibit I-1.

22 THE COURT: Any objection, Ms. Armijo?

23 MS. ARMIJO: Your Honor, I don't know if  
24 their video is cut. We have a copy, too, but we  
25 have the witness who actually gave it to this



1 gentleman to come in and testify about it. But I  
2 don't know if theirs is the exact same or not.

3 MR. VILLA: I'm happy to use the  
4 Government's copy.

5 THE COURT: All right. Is it okay if we  
6 go ahead and admit Defendant's Exhibits I-1 or the  
7 Government's Exhibit?

8 MS. ARMIJO: I would like the Government's  
9 Exhibit --

10 THE COURT: Any objection to that?

11 MR. VILLA: What number is the  
12 Government's?

13 MS. ARMIJO: 11. Your Honor, may we just  
14 have a brief moment?

15 THE COURT: Certainly. All right. I'm  
16 not hearing any objection. So Government's Exhibit  
17 11 will be admitted into evidence.

18 (Government Exhibit 11 admitted.)

19 MS. ARMIJO: Thank you, Your Honor.

20 BY MR. VILLA:

21 Q. Agent Palomares, you know that  
22 Government's 11 is the same video that you reviewed  
23 of the Javier Molina homicide?

24 A. Yes, sir.

25 Q. So I'm showing you Government's Exhibit

1 11. Before we play the video, we'll see if we can  
2 make it a little bit larger. So Agent Palomares,  
3 let me just ask you a few questions before we start.  
4 You see here on the screen where I've got this  
5 little cursor? I'll just draw -- it says "1-A B  
6 pod"?

7 A. Yes.

8 Q. That's the blue pod where the Javier  
9 Molina assault took place?

10 A. Yes.

11 Q. Okay. And this picture that we see here  
12 is before the attack takes place; correct?

13 A. Yes.

14 Q. Why don't we play the video.

15 MS. ARMIJO: And, Your Honor, just for  
16 clarification, there's two different scenes, and we  
17 just want to make sure that Mr. Villa wants this  
18 scene as opposed to the other view.

19 MR. VILLA: Let's start with this view and  
20 then we'll go to the second view.

21 THE COURT: I think Ms. Bean needs some  
22 identification here.

23 BY MR. VILLA:

24 Q. If we look in the top left corner so we  
25 understand the views, Agent Palomares, you see here

1 where I've just drawn -- it says CH 04?

2 A. Yes.

3 Q. That's channel 4; correct?

4 A. Yes.

5 Q. You know that to be one of the two views  
6 that are available from this pod?

7 A. Yes.

8 Q. And to the right of channel 4 it says  
9 3/7/2014. That's the date; correct?

10 A. Yes.

11 Q. And next to that it says 17:14:59:390. Is  
12 that a time stamp?

13 A. Yes.

14 Q. Do you know what time that is?

15 A. It's 5:14 p.m.

16 Q. So 17:14 military time?

17 A. Yes.

18 Q. And the rest of the time, is that seconds?

19 A. Yes.

20 Q. So that's where the video begins?

21 A. Yes.

22 Q. Okay. I'll clear the screen again. Now,  
23 why don't we play this channel 4?

24 (Tape played.)

25 MR. VILLA: Can we pause it right there?

1 Q. Agent Palomares, I paused it. Now we're  
2 at 17:15:47:421; correct?

3 A. Yes.

4 Q. You see down on this bottom part where I'm  
5 going to just draw a little line -- do you see that  
6 stair rail there?

7 A. I'm sorry?

8 Q. Maybe it's not a stair rail, but it's a  
9 rail that I just drew a line across?

10 A. Yes, sir.

11 Q. And that divides what we call in here the  
12 day room from down here where there are cells;  
13 correct?

14 A. Correct.

15 Q. So let me clear that screen. Did you see  
16 the two individuals that were coming out right here?

17 A. I did.

18 Q. You saw, just before we paused it, that  
19 they were walking out of here, going this way?

20 A. I wasn't paying attention to those people  
21 in the back.

22 Q. Did you identify who those people were in  
23 the course of your investigation?

24 A. Not at that time.

25 Q. Did you ever identify who those people

1 were?

2 A. I know who they are, but I don't know who  
3 they are at the particular occasion.

4 Q. Okay. So tell me who they are.

5 A. I don't know at this time. I need to  
6 follow the video.

7 Q. Oh, okay. So why don't we clear the  
8 screen, and let's play the video a little bit  
9 further.

10 (Tape played.)

11 Q. What if we pause it right there.

12 A. Yes, sir.

13 Q. So you see this individual here? Do you  
14 know who that is?

15 A. I believe that's a nurse.

16 Q. Do you know her name?

17 A. I don't know her name.

18 Q. If I told you it was Julia Lamon  
19 (phonetic) or Julia Black, does that refresh your  
20 memory?

21 A. That's hard to say.

22 Q. Do you know that this nurse was coming  
23 from Rudy Perez' room?

24 A. Yes.

25 Q. To provide him medication?

1 A. Right.

2 Q. And then I guess there's this individual

3 behind her and another individual to the right.

4 Those are corrections officers?

5 A. Yes.

6 Q. And just for the record, this still that

7 I've just been talking to you about is 17:15:53:421;

8 correct?

9 A. Yes.

10 MR. VILLA: Okay. Why don't we clear the

11 screen and we can continue rolling video.

12 (Tape played.)

13 MR. VILLA: Can we pause it right here?

14 Q. Now, I paused it at 17:16:20:406. Agent

15 Palomares, do you know who this individual is

16 walking up the stairs?

17 A. That's Mario Rodriguez.

18 Q. That's Mario Rodriguez?

19 A. Yes.

20 Q. One of the individuals that you charged

21 with conspiracy after your investigation?

22 A. Yes.

23 Q. Who you don't know -- or I think you do

24 know he's now cooperating with the United States

25 Attorney's office?

1 A. I'm not sure.

2 Q. Do you know -- in the course of your  
3 investigation, did you learn that he also goes by  
4 Blue?

5 A. Yes.

6 Q. That's his moniker?

7 A. Yes.

8 MR. VILLA: And did I get the time stamp  
9 already on this one? Let's clear the screen and  
10 we'll keep playing.

11 (Tape played.)

12 Q. Now, I want to pause it right there, if we  
13 can. Agent Palomares, Javier Molina's room was on  
14 the upstairs part. Before you answer, I paused it  
15 at 17:16:32:406; correct?

16 A. Yes.

17 Q. And Javier Molina's room was in the  
18 upstairs part of the blue pod; correct?

19 A. Yes.

20 Q. I just sort of drew a line on the upstairs  
21 part. Which room was his room?

22 A. 105.

23 Q. And can you see on here where 105 is?

24 A. You can see it on the top right-hand  
25 corner.

1 Q. Right here where I drew the line?

2 A. Yes.

3 Q. You can see that the door is open?

4 A. Correct.

5 Q. And somebody just went in his room;  
6 correct?

7 A. Yes.

8 Q. Who was that that went in the room?

9 A. It's both Javier Molina and Mario  
10 Rodriguez.

11 Q. So you saw Javier Molina go in, and you  
12 saw Mario Rodriguez go in?

13 A. Yes.

14 MR. VILLA: All right. Let's clear the  
15 screen and we'll keep playing it.

16 (Tape played.)

17 MR. VILLA: Why don't we pause it there.

18 Q. I'm sorry, Agent Palomares, I forgot to  
19 ask you a question. I paused it at 17:16:39:406.  
20 You saw somebody who was walking themselves up the  
21 stairs, and now they're at the top of the stairs  
22 where I drew that mark?

23 A. Yes.

24 Q. Who is that?

25 A. Jerry Armenta.



1 Q. Jerry Armenta, the individual who you  
2 ultimately charged with first-degree murder for the  
3 murder of Javier Molina?

4 A. Yes.

5 Q. Who the district attorney's dismissed the  
6 case against?

7 A. Right; correct.

8 Q. Who is now cooperating with the United  
9 States Attorney's Office?

10 A. Correct.

11 Q. Who you got the call -- I think you  
12 testified about this on direct -- you got a call  
13 that he wanted to cooperate?

14 A. Correct.

15 MR. VILLA: All right. We'll clear the  
16 screen and continue playing.

17 (Tape played.)

18 MR. VILLA: If we can pause it right  
19 there.

20 Q. So now I paused it at 17:17:38:406; is  
21 that right, Agent Palomares?

22 A. Yes.

23 Q. There is an individual walking up the  
24 stairs right there. Who is that?

25 A. That's Jerry Montoya.

1 Q. Jerry Montoya. That's the other  
2 individual that you charged with the homicide of  
3 Javier Molina?

4 A. Yes.

5 Q. Whose state case for first-degree murder  
6 was also dismissed?

7 A. Yes.

8 Q. Who is now cooperating with the United  
9 States Attorney's Office?

10 A. I'm not sure.

11 Q. You don't know. Okay.

12 MR. VILLA: Let's clear the screen and  
13 we'll keep rolling.

14 (Tape played.)

15 MR. VILLA: Will you pause it there.

16 Q. Agent Palomares, I paused it at  
17 17:18:24:406; correct?

18 A. Yes.

19 Q. Now, the individual on the right just  
20 outside of Javier Molina's room -- who is that?

21 A. That's Javier Molina.

22 Q. And the individual that we just saw  
23 walking up the stairs and is now at this point right  
24 on the upper level, right above where it says 1A-B  
25 pod -- who is that individual?

1 A. That's Mario Rodriguez.

2 Q. Mario Rodriguez again.

3 MR. VILLA: Let's clear the screen and  
4 we'll keep playing.

5 (Tape played.)

6 MR. VILLA: Now, can we pause it there?

7 Q. So I paused it at 17:18:36:406. It was  
8 Javier Molina and Mario Rodriguez that just went  
9 into Javier Molina's room?

10 A. Yes.

11 Q. Is anybody else in the room at this time?

12 A. I need to see the second angle on the  
13 camera, but it should be Timothy Martinez.

14 Q. You learned in the course of your  
15 investigation that Timothy Martinez also ultimately  
16 goes into the room with Mario Rodriguez.

17 A. Yes.

18 Q. And Timothy Martinez -- sometimes he goes  
19 by Red?

20 A. Yes.

21 Q. And that will be on the other channel, the  
22 other angle of the video that you see; correct?

23 A. Correct.

24 Q. The way this video is, it's sort of, I  
25 guess, delayed or kind of skips. Is that the way

1 the correction video was, as you understood it?

2 A. Yes.

3 MR. VILLA: Can we pause it there?

4 Q. Sergeant, I paused it at 17:18:54:406. We  
5 just saw somebody walk up the stairs, and now  
6 they're sitting down. I put a mark on him. Who is  
7 that?

8 A. That's Jerry Armenta.

9 MR. VILLA: Let's clear the screen and  
10 keep rolling, please.

11 (Tape played.)

12 Q. Let's pause it at 17:19:09:406. We just  
13 saw an individual with some kind of white cap or  
14 something on his head and a towel over his shoulder  
15 walk up the stairs and sit down near Mr. Armenta.  
16 Who is that?

17 A. Jerry Montoya.

18 Q. So Jerry Montoya. In the previous shot  
19 we'd seen him, he didn't have anything on his head;  
20 correct?

21 A. Correct.

22 Q. He must have put something on his head and  
23 come back upstairs?

24 A. From what I understand, it's a rag he was  
25 holding.

1 Q. Some kind of rag?

2 A. Yes.

3 MR. VILLA: Let's keep playing.

4 (Tape played.)

5 MR. VILLA: Will you pause it?

6 Q. Sergeant, I paused it at 17:20:04:406;  
7 correct?

8 A. Yes.

9 Q. We just saw Jerry Armenta and Jerry  
10 Montoya stand up. Now they're walking towards  
11 Javier Molina's room; correct?

12 A. Yes.

13 MR. VILLA: Let's keep playing.

14 (Tape played.)

15 MR. VILLA: Pause it there, please.

16 Q. Sergeant, I paused now at 17:20:18:406;  
17 correct?

18 A. Yes.

19 Q. Both Jerry Armenta and Jerry Montoya  
20 walked into Javier Molina's cell, did they not?

21 A. Yes.

22 MR. VILLA: Please keep playing.

23 (Tape played.)

24 Q. I stopped it at 17:20:31:406. An  
25 individual appeared to walk from the direction of

1 Javier Molina's room this way, and I stopped with  
2 the marker on him now, just before he gets to the  
3 stairway. Who is that?

4 A. That's Timothy Martinez.

5 Q. Timothy Martinez, you know from the other  
6 camera angle, walked out of Javier Molina's room?

7 A. Yes.

8 Q. Did you learn in the course of your  
9 investigation that Timothy Martinez was good friends  
10 with Javier Molina?

11 A. Yes.

12 Q. Before we do that, there's another  
13 individual that appears in front of Javier Molina's  
14 room. Who is that individual?

15 A. That's Mario Rodriguez.

16 Q. And by the way, because the video is not  
17 clear, you had to do some investigation before you  
18 could identify who all these folks were; correct?

19 A. Correct.

20 Q. Because you didn't know them?

21 A. Correct.

22 Q. You worked with STIU -- we heard that  
23 testimony -- and the New Mexico Corrections  
24 Department officers to identify these individuals.

25 A. Yes.

1 MR. VILLA: Okay. Let's clear the screen,  
2 please, and we'll keep playing.

3 (Tape played.)

4 MR. VILLA: Can we pause it right there?

5 Q. Sergeant, I paused it at 17:20:46:406.  
6 The individual that's stopped in the upper level  
7 railing there -- is that Mario Rodriguez?

8 A. Yes.

9 Q. Did you ever determine whether Mario  
10 Rodriguez also stabbed Javier Molina?

11 A. I didn't have any evidence to determine  
12 that he was stabbed by Mario Rodriguez.

13 Q. Did Mario Rodriguez, Blue, stab Javier  
14 Molina?

15 A. No.

16 Q. So his role in the murder, that you  
17 concluded, was conspiracy?

18 A. Correct.

19 Q. Did you ever investigate whether Mario  
20 Rodriguez had an icepick on the day of the murder  
21 that was used on Javier Molina?

22 A. I investigated. I had no reason to  
23 believe that he had one.

24 Q. When I say "icepick," I don't mean like  
25 the icepick you and I might go get from the store,

1 but a specific type of shank that the inmates call  
2 an icepick.

3 A. Correct. I don't think he had one.

4 MR. VILLA: Let's keep rolling.

5 (Tape played.)

6 MR. VILLA: Let's pause it there at  
7 17:20:56:406.

8 Q. There is an individual at the top of the  
9 stairs with a white shirt that appears to have  
10 something on his chest. Can you tell me who that  
11 is?

12 A. That's Javier Molina.

13 MR. VILLA: Can we clear the screen,  
14 please?

15 Q. What's on his chest?

16 A. What I know now, it's blood.

17 Q. Okay. So Javier Molina leaves his room,  
18 and there is another individual sort of coming  
19 behind him, I guess, in the same direction. That's  
20 Jerry Montoya?

21 A. Yes.

22 Q. Mario Rodriguez is still standing right  
23 here in front of the railing?

24 A. Yes.

25 MR. VILLA: Okay. Let's clear the screen,



1 please, and continue rolling.

2 (Tape played.)

3 MR. VILLA: Let's pause it right there.

4 Q. So we paused it, Sergeant, at  
5 17:21:02:421; is that right?

6 A. Yes.

7 Q. And I'm sorry I have to keep asking that.  
8 It's for the record we're making.

9 A. That's fine.

10 Q. So down here at the bottom, the individual  
11 at the bottom of the stairs on the left-hand corner  
12 of the picture, the individual with the white shirt  
13 where I've drawn my line, that's Javier Molina;  
14 right?

15 A. Yes.

16 Q. This individual who happens to be  
17 attacking Javier Molina is Jerry Montoya; correct?

18 A. Yes.

19 Q. This individual coming down the stairs at  
20 the same time -- who is that?

21 A. Jerry Armenta.

22 Q. And up here, is that still Mario  
23 Rodriguez?

24 A. Yes.

25 MR. VILLA: Okay. So we'll clear the

1 screen, please, and continue playing.

2 (Tape played.)

3 MR. VILLA: Now, let's pause it there.

4 Q. Sergeant, it's paused at 17:21:11:390?

5 A. Yes.

6 Q. Right before that, Jerry Armenta continues  
7 down the stairs and appears to be assisting Jerry  
8 Montoya in the attack on Javier Molina; right?

9 A. Right.

10 Q. Okay. And now they're walking away; in  
11 this still shot they appear to be walking away;  
12 correct?

13 A. Yes.

14 MR. VILLA: So let's keep going, please.

15 (Tape played.)

16 MR. VILLA: Let's pause it right there.

17 Q. Sergeant, I paused it at 17:21:19:390. Is  
18 this Jerry Armenta going back in the direction of  
19 Javier Molina?

20 A. Yes.

21 Q. And did you see, up here, Mario Rodriguez  
22 walked into that area?

23 A. I did.

24 Q. That's the shower area; correct?

25 A. Yes.

1 Q. And he -- right before that, Mario  
2 Rodriguez leaned down and looked like he was picking  
3 something up and then went to the shower; correct?

4 A. Yes.

5 Q. You ultimately found in that shower -- you  
6 or someone that was working with you -- what  
7 appeared to be a shank; correct?

8 A. Correct.

9 Q. That you believe was used to kill Javier  
10 Molina?

11 A. Correct.

12 Q. And you charged Mario Rodriguez in part  
13 because he was picking up that shank and putting it  
14 in the shower drain to hide it?

15 A. Correct.

16 MR. VILLA: Let's clear the screen,  
17 please, and we'll keep playing.

18 (Tape played.)

19 Q. Sergeant, I paused it at 17:22:22:406;  
20 correct?

21 A. Yes.

22 Q. Now it appears there's two individuals in  
23 the bottom of the screen. Those are corrections  
24 officers?

25 A. Yes.

1 Q. So they had come in after having seen what  
2 happened?

3 A. Yes.

4 Q. Is that right? And we saw a number of  
5 inmates walking around, some of them back and forth,  
6 some of them go in their cell. None of those  
7 individuals were Rudy Perez, were they?

8 A. No.

9 Q. Rudy Perez is never seen in any of the  
10 videos that you captured for this investigation.

11 A. Correct.

12 MR. VILLA: All right. Let's clear the  
13 screen and continue.

14 (Tape played.)

15 MR. VILLA: Let's pause it there.

16 Q. So just for the record, Sergeant, I paused  
17 it at 17:23:17:406. I want to switch now, if we  
18 can, to the other camera angle. We'll get that up  
19 in just a second. Let me follow up while we're  
20 doing that. As far as you understood from your  
21 investigation, while all this was taking place, Mr.  
22 Perez was in his cell?

23 A. I wasn't sure at the time. I don't see  
24 him on the video. So at the time, yes, I was  
25 assuming he was in his cell.

1 Q. Did you ever make any other investigative  
2 determination, other than that Mr. Perez was in his  
3 cell?

4 A. No. I had no other leads.

5 Q. So as far as you know, he was in his cell  
6 the entire time?

7 A. Correct.

8 Q. Okay. So now, this is the other part of  
9 Government's Exhibit 11, and this is the other  
10 camera angle that we're looking at that was  
11 available or provided to you by Corrections  
12 Department; right?

13 A. Yes, sir.

14 Q. And this now in the top left-hand corner  
15 where I've just drawn an underline, it says "CH 05"  
16 in brackets. That's channel 5?

17 A. Yes.

18 Q. And again, that denotes the camera angle  
19 that's available in blue pod?

20 A. Yes.

21 Q. And it also has 03-07-2014. That's the  
22 date; correct?

23 A. Correct.

24 Q. Next to that is the time 17:15:03:406;  
25 correct?

1 A. Yes.

2 Q. And this -- again, this is before the  
3 assault takes place. It starts at the same time as  
4 channel 4 started; correct?

5 A. Yes.

6 MR. VILLA: If we could clear the screen,  
7 please, and then we'll play it.

8 (Tape played.)

9 Q. Sergeant, I paused it at 17:15:33:406;  
10 correct?

11 A. Yes.

12 Q. Can you -- well, let me ask you this. I'm  
13 going to draw a line there. Is that Javier Molina's  
14 room?

15 A. Yes.

16 Q. And down here you see there is an  
17 individual standing down here on the bottom level?

18 A. Yes.

19 Q. And so for the record, where I drew the  
20 line for Javier Molina's room was on the upper level  
21 part; correct?

22 A. Correct.

23 Q. Just above and to the right where we can  
24 see in the middle of the screen, it says "1A-B pod";  
25 correct?

1 A. Correct.

2 Q. And below that, diagonally to the right, I  
3 just drew a line to an individual who is downstairs  
4 on the bottom level of cells; right?

5 A. Correct.

6 Q. Do you know who that individual is?

7 A. I'm not sure.

8 MR. VILLA: All right. Let's clear the  
9 screen, please, and we'll continue to play.

10 (Tape played.)

11 Q. I stopped it, Sergeant, at 17:15:43:390?

12 A. Yes.

13 Q. And I drew a line under an individual.  
14 Did you recognize that as the nurse who was walking  
15 out of Mr. Perez' cell?

16 A. Yes.

17 Q. Did you see which cell she walked out of?

18 A. I believe it's 115.

19 Q. Is that one there in the corner?

20 A. Yes.

21 Q. And that's the cell of Mr. Rudy Perez?

22 A. Correct.

23 Q. So just the other angle of what we saw on  
24 channel 4?

25 A. Yes, sir.

1 MR. VILLA: Let's clear the screen,  
2 please, and we'll continue playing.

3 (Tape played.)

4 Q. I'm going to keep it rolling, but again,  
5 none of these individuals that we see in this video  
6 are Rudy Perez; correct?

7 A. Correct.

8 Q. In fact, you never saw him on this channel  
9 5; correct?

10 A. No.

11 MR. VILLA: Let's pause it right there.  
12 Can you back it up just a second, please? Just a  
13 little bit more. Okay, we'll stop it right there.

14 Q. Sergeant, I paused it at 17:16:19:656.  
15 This individual is going to walk into Javier  
16 Molina's room. Is that Javier Molina?

17 A. Why don't you back it up a little bit?  
18 I'm not sure if that's Mario or Javier.

19 Q. Let me clear the screen also, and we'll  
20 back it up a few seconds here and let it run for a  
21 little bit.

22 (Tape played.)

23 MR. VILLA: Why don't we stop there.

24 Q. That individual that we're talking about  
25 in front of Javier Molina's room -- I paused it at



1 17:16:21:187. Do you know who that individual is  
2 now?

3 A. That's Javier Molina.

4 Q. And you saw him sort of gesturing with his  
5 arm, like waving to somebody?

6 A. I did.

7 Q. Did you determine who he was gesturing to?

8 A. Mario Rodriguez.

9 Q. Mario Rodriguez, Blue?

10 A. Yes.

11 Q. Telling him, "Come on up," or something  
12 like that?

13 A. He was gesturing, I'm assuming.

14 Q. That's what you -- when you looked at the  
15 gesture, that's what you thought it was?

16 A. Correct.

17 MR. VILLA: Let's keep playing it, please.

18 (Tape played.)

19 MR. VILLA: Let's pause it there.

20 Q. Sergeant, I paused it at 17:16:34:187.

21 Now we see an individual go into Javier Molina's  
22 room after him. Is that Mario Rodriguez?

23 A. Yes.

24 Q. Okay. Thank you. We'll keep playing.

25 (Tape played.)

1 MR. VILLA: Let's pause it there.

2 Q. Sergeant, I paused it at 17:16:42:390.  
3 Someone just walked out of Mr. Molina's room and  
4 went the other direction away from where the stairs  
5 are. Who was that?

6 A. Mario Rodriguez.

7 Q. Still Mario Rodriguez.

8 MR. VILLA: Okay, we'll keep playing it,  
9 please.

10 (Tape played.)

11 MR. VILLA: Let's pause it there. Thank  
12 you.

13 Q. Sergeant, we paused it at 17:17:04:390.  
14 We just saw Javier Molina come out of his room and  
15 go to the rail, make another gesture, and go back  
16 in; correct?

17 A. Yes.

18 Q. Did you determine in your investigation  
19 what he was doing?

20 A. Yes, he was taking Suboxone.

21 Q. What is Suboxone?

22 A. It's some type of drug. It's common in  
23 inmates to ingest or inhale.

24 Q. And then he goes into his cell right at  
25 the point where we stopped it. So then let's

1 continue playing.

2 (Tape played.)

3 MR. VILLA: We'll pause it there. Thank  
4 you.

5 Q. Sergeant, I paused it at 17:17:23:421.  
6 That was Mario Rodriguez who just walked back by  
7 Mr. Molina's cell and out of the view to the left;  
8 correct?

9 A. Correct.

10 MR. VILLA: Let's continue playing.

11 (Tape played.)

12 Q. Sergeant, 17:18:22:390 -- that's where I  
13 paused it; correct?

14 A. Yes.

15 Q. Right before that, you see the door to  
16 Javier Molina's cell close?

17 A. Yes.

18 Q. Did you determine how those doors opened  
19 and closed?

20 A. It's the controller, the correctional  
21 officer, which is on the opposite side of the pod.  
22 He has access to close and shut the -- each cell.

23 Q. And so that the jury understands, we're  
24 looking at an angle that's similar to what the pod  
25 officer would look at; correct?

1 A. Correct.

2 Q. And if the officer is not in the pod, he's  
3 in an elevated area or tower where he can look into  
4 this pod as well as other pods; correct?

5 A. Yes.

6 Q. He has a button or switch or something  
7 that opens and closes the doors?

8 A. Yes.

9 Q. And so we saw Mr. Molina walk out of his  
10 room a little bit kind of back and forth at the top  
11 and then the cell door closes?

12 A. Yes.

13 MR. VILLA: Let's continue, please.

14 (Tape played.)

15 MR. VILLA: Let's pause it there.

16 Q. So I paused it, Sergeant, at 17:18:31:390.  
17 The door opens up again; right?

18 A. Yes.

19 Q. And the way that the door opens, as we  
20 said, the officer does it?

21 A. Yes.

22 Q. And it looks like three individuals are  
23 now walking into Javier Molina's room; correct?

24 A. Yes.

25 Q. That's Javier Molina; right?

1 A. Yes.

2 Q. Mario Rodriguez?

3 A. Correct.

4 Q. And Timothy Martinez?

5 A. Yes, sir.

6 MR. VILLA: Let's continue.

7 (Tape played.)

8 MR. VILLA: Let's pause it there.

9 Q. Sergeant, we're at 17:20:03:390; correct?

10 A. Yes.

11 Q. And we now see two individuals on the  
12 upper level walking in the direction of Javier  
13 Molina's room; correct?

14 A. Yes.

15 Q. That's Jerry Armenta and Jerry Montoya?

16 A. Yes.

17 Q. And throughout the time since our last  
18 pause, Javier Molina's door has been open; right?

19 A. Yes.

20 Q. But you're not able to see what's going on  
21 in there; correct?

22 A. Right.

23 Q. There's a little bit, but it's difficult  
24 to tell, because of the quality of video and the  
25 angle.

1 A. Just some shadows, that's it.

2 Q. But you ultimately determined that Timothy  
3 Martinez went in there and incapacitated Javier  
4 Molina; correct?

5 A. Yes.

6 Q. Choked him?

7 A. Yes.

8 Q. To unconsciousness?

9 A. Yes.

10 Q. His own friend?

11 A. Yes.

12 Q. The same Timothy Martinez that's working  
13 for the Government?

14 A. I'm not sure.

15 Q. And Mario Rodriguez is in there, too;  
16 right?

17 A. Yes.

18 MR. VILLA: Let's keep playing.

19 (Tape played.)

20 Q. Sergeant, we're at 17:20:16:390; right?

21 A. Yes.

22 Q. Jerry Armenta and Jerry Montoya just  
23 walked into Javier Molina's room?

24 A. Yes.

25 Q. And you determined in your investigation

1 that while Javier Molina was choked to  
2 unconsciousness by his friend Timothy Martinez, they  
3 began stabbing him?

4 A. Correct.

5 Q. Jerry Armenta and Jerry Montoya?

6 A. Yes.

7 Q. The same two guys working for the  
8 Government?

9 MS. ARMIJO: Objection, asked and  
10 answered.

11 THE COURT: Overruled.

12 BY MR. VILLA:

13 Q. Are they?

14 A. Is that a question?

15 Q. Yes, it is.

16 A. I'm not sure.

17 MR. VILLA: Let's keep playing.

18 (Tape played.)

19 MR. VILLA: Let's pause it there.

20 Q. This is, Sergeant, 17:20:26:390?

21 A. Yes.

22 Q. So two individuals have come out of Javier  
23 Molina's room; right?

24 A. Yes.

25 Q. Is that Timothy Martinez and Mario

1 Rodriguez?

2 A. Yes, sir.

3 MR. VILLA: Let's keep playing.

4 (Tape played.)

5 MR. VILLA: Let's pause it there.

6 Q. Sergeant, is 17:28:47:390 where it's  
7 paused?

8 A. Yes.

9 Q. So this individual at the top of the stair  
10 rail -- that's Mario Rodriguez; right?

11 A. Yes, sir.

12 Q. We saw just a minute ago, or seconds ago,  
13 that Timothy Martinez walks away out of view.

14 A. Yes.

15 Q. We saw from the other shot that he just  
16 kept going; right?

17 A. Yes.

18 Q. Mario Rodriguez kind of lingers and he's  
19 sitting there, he's looking in there, watching,  
20 isn't he?

21 A. Yes.

22 MR. VILLA: Let's clear the screen,  
23 please, and we'll keep playing.

24 (Tape played.)

25 MR. VILLA: Let's pause it.



1 Q. We're at 17:20:54:406; correct?

2 A. Yes.

3 Q. And at the very left of the screen, the  
4 top rail, just above where it says "pod," that's  
5 Javier Molina walking out of his cell with blood on  
6 his shirt; right?

7 A. Right.

8 Q. And right next to Mario Rodriguez, here  
9 where I'm drawing in the middle of the top part of  
10 the pod, Jerry Montoya has come out; right?

11 A. Yes.

12 Q. And coming out of the room of Javier  
13 Molina is Jerry Armenta?

14 A. Yes.

15 MR. VILLA: Let's clear the screen,  
16 please, and continue.

17 (Tape played.)

18 MR. VILLA: We'll pause it there.

19 Q. So we paused it at 17:21:02:406, and we  
20 just saw Javier Molina, Jerry Armenta, and Jerry  
21 Montoya go out of view; correct?

22 A. Yes.

23 Q. And for the jury, if we went back to  
24 channel 4, which I don't necessarily want to do, but  
25 that's where we pick up the part where they're

1 pursuing Javier Molina down the stairs and  
2 continuing to attack him; right?

3 A. Correct.

4 MR. VILLA: I think that's all I need to  
5 show for Government's Exhibit 11.

6 Q. So based on what you saw on this video --  
7 I think you testified to this -- you wanted to get  
8 DNA evidence from those four men: Jerry Armenta,  
9 Jerry Montoya, Mario Rodriguez and Timothy Martinez;  
10 correct?

11 A. Correct.

12 MR. VILLA: So if I can have -- let's  
13 switch over to, Ms. Gilbert, if I can -- let's look  
14 at Government's 606, which has already been  
15 admitted.

16 Q. Sergeant, do you recognize that to be a  
17 photo of Jerry Armenta?

18 A. Yes.

19 Q. The same individual that you charged with  
20 first-degree murder?

21 A. Yes, sir.

22 Q. And let's go over to Government's 596,  
23 which has already been admitted. This is a  
24 photograph of Jerry Montoya; is that correct?

25 A. Yes.

1 Q. And the date on there is 12/3/2015, isn't  
2 it?

3 A. Yes.

4 Q. That's the date -- do you know if that's  
5 the date when he was arrested on the federal  
6 charges?

7 A. I don't know that.

8 Q. Do you know who took this picture, or the  
9 purpose of the picture?

10 A. No.

11 Q. Do you know why Mr. Montoya is smiling?

12 A. No.

13 Q. Let's go to Government's 561. That's a  
14 picture of Timothy Martinez; correct?

15 A. Correct.

16 Q. Also goes by Red?

17 A. Yes.

18 Q. And again, it's taken on 12/3/2015. You  
19 don't know the significance of that, do you?

20 A. No.

21 Q. Let's go to Government's 586. That's a  
22 picture of Mario Rodriguez, or Blue?

23 A. Yes.

24 Q. Did you conduct an investigation about the  
25 type of reputation Mario Rodriguez had?

1 A. No.

2 Q. Now, Agent, isn't it true that following  
3 your investigation, you collected or individuals  
4 with your team collected what you believe to be the  
5 weapons used against Javier Molina?

6 A. Correct.

7 Q. How many weapons were collected?

8 A. Three weapons.

9 Q. Three weapons?

10 A. Yes.

11 Q. One from the shower; right?

12 A. Yes.

13 Q. And then were two collected from the trash  
14 can that were in the downstairs part of the pod?

15 A. Yes.

16 Q. Were there any more weapons collected?

17 A. Not at the time.

18 Q. Any collected later?

19 A. Yes.

20 Q. When were they collected?

21 A. On March 10th, 2014.

22 Q. And how many weapons were collected then?

23 A. One knife, one shank.

24 Q. Where was that knife or shank collected  
25 from?

1 A. Somewhere between a wall, the top tier,  
2 bottom tier, near room 105.

3 Q. So in the wall that connects the top tier  
4 and bottom tier? Is that what you're saying?

5 A. Yes, that was my understanding that's  
6 where they got it from.

7 Q. Okay.

8 MR. VILLA: May I have just a moment, Your  
9 Honor?

10 THE COURT: You may.

11 BY MR. VILLA:

12 Q. Remember I talked to you earlier about the  
13 icepick?

14 A. Yes, sir.

15 Q. And when I said "icepick," I was talking  
16 about something that the inmates refer to as an  
17 icepick. Would you consider any of the weapons you  
18 recovered one of those things that they call a  
19 icepick?

20 A. I never heard it before. I heard it as  
21 shank.

22 Q. So as far as you know, the shanks that  
23 were recovered aren't classified as icepicks by  
24 inmates?

25 A. They're known as shanks.

1 Q. Shanks. Okay. You were conducting your  
2 investigation along with STIU; right?

3 A. Yes.

4 Q. Did you or STIU ever conduct an  
5 investigation into whether Mr. Perez had been  
6 threatened?

7 A. I never heard anything of him being  
8 threatened.

9 MR. VILLA: Just one more moment, Your  
10 Honor.

11 THE COURT: All right.

12 MR. VILLA: I'll pass the witness.

13 THE COURT: Thank you, Mr. Villa.

14 Why don't we take our break for the  
15 morning? At least one of our morning breaks. We'll  
16 be in recess for about 15 minutes. All rise.

17 (The jury left the courtroom.)

18 THE COURT: Mr. Beck, is the 302 regarding  
19 Calbert that was attached to your January 28 letter  
20 that you sent to counsel -- is that the one that  
21 I've just been handed.

22 MR. BECK: I think there was a second one  
23 at 1/29. What I've done, because there was some  
24 confusion, I've just gotten copies for everyone of  
25 all the 302s that were disclosed under those two

1 letters that you have. I'm going to distribute  
2 those to counsel and see if we can hand you up a  
3 copy of those so you also have the 302s.

4 THE COURT: Why don't you look and see if  
5 I've already gotten them and read them, so I don't  
6 get more copies here. I've got a lot of copies  
7 here.

8 All right. We'll be in recess for about  
9 15 minutes.

10 (The Court stood in recess.)

11 THE COURT: All right. Before we bring  
12 the jury in, Ms. Duncan, you needed to bring  
13 something up?

14 MS. DUNCAN: I just wanted to put  
15 something on the record, Your Honor. When the video  
16 of the Javier Molina murder was about to be played,  
17 Mr. Marcantel said something to the widow of Javier  
18 Molina. I don't know what he said, but he said it  
19 loud enough to cause the jurors who are at the end  
20 of the jury box to react to it. So I would just ask  
21 the Court to caution Mr. Marcantel to be aware of  
22 where he's sitting in the courtroom, and that he  
23 should not speak loud enough for the jurors to hear  
24 him.

25 MR. VILLA: Do you understand that? Those

1 are my instructions, Mr. Marcantel.

2 MR. MARCANTEL: Yes, sir. If you need any  
3 clarity, all I did was ask her, is she okay.

4 THE COURT: Well, let's not do that,  
5 because it attracts attention to you, and I don't  
6 want people to start looking at you. I want them to  
7 be watching the evidence. So let's not be talking  
8 back there.

9 MR. MARCANTEL: Certainly.

10 THE COURT: Okay. You're next, Mr. Villa.

11 MR. VILLA: Your Honor, on Friday you  
12 ordered, in response to our motion to compel, that  
13 we could issue a subpoena to Lovington for Jerry  
14 Montoya because he had gotten caught with a  
15 cellphone and drugs and other things. And we got  
16 the subpoena and information. We issued the  
17 subpoena. It was returned to me yesterday by Agent  
18 Acee with a cellphone, a copy of the search warrant,  
19 and a charge for the cell phone.

20 Mr. Beck, however, informs me -- and he  
21 informed us of this yesterday -- there was a DVD, as  
22 well, and it contains 3,000 pages of documents, but  
23 the Government took that. It was my subpoena. I  
24 should get a copy of that disc. If the Government  
25 needs to have a copy, we're happy to provide them.



1 But they essentially, in my view, interfered with  
2 the subpoena and took the disc and just gave me the  
3 rest. Now Mr. Beck says he'll give me a copy, but  
4 it's my subpoena.

5 THE COURT: Why are y'all involved in the  
6 process?

7 MR. BECK: We offered to help coordinate  
8 return of the cellphone -- production of the  
9 cellphone to Mr. Villa when they obtained the  
10 subpoena. So I said the Lovington Police Department  
11 could just send it to me and I would present it to  
12 them so they didn't have to show up so they could  
13 get it here earlier.

14 We found out, when they sent it, the  
15 sergeant called me and said, "I also sent you a copy  
16 of our investigative file inside the Fed Ex package  
17 which was sent to Special Agent Acee."

18 When I received it, I understand Special  
19 Agent Acee signed the evidence, signed it over to  
20 the defense. We took the DVD and we are making  
21 copies of it. All the defendants and I have agreed  
22 that they will get copies of what's in it. It will  
23 be attorneys' eyes only, because there very well may  
24 be PIIs and some other recordings.

25 MR. VILLA: Would you have a problem with

1 this -- go ahead and make your copies, but then give  
2 the original to Mr. Villa, let him look at it, and  
3 then y'all can decide whether it goes back to  
4 Lovington or stays here for the trial.

5 MR. BECK: Sure.

6 THE COURT: Does that work for you, Mr.  
7 Villa, because they're making copies for everybody?

8 MR. VILLA: As long as we get it today,  
9 because I think Mr. Montoya may testify next week,  
10 and we'd like to review it this weekend.

11 MR. BECK: They'll get it today.

12 THE COURT: Fair enough.

13 Ms. Jacks, did you have something you  
14 wanted to give me and talk to me about?

15 MS. JACKS: I did. Over the recess, we  
16 realized that the paper that I was referring to had  
17 not been given to you.

18 THE COURT: Okay.

19 MS. JACKS: And so we gave you that page  
20 from discovery. I think it's 51474.

21 THE COURT: 51474.

22 MS. JACKS: Thank you.

23 THE COURT: All rise.

24 (The jury entered the courtroom.)

25 MR. VILLA: All right. Everyone be

1 seated.

2 All right, Mr. Palomares, if you'll return  
3 to the witness box and I'll remind you that you're  
4 still under oath.

5 THE WITNESS: Yes, sir.

6 THE COURT: Who was going to go next?

7 MR. JEWKES: I will, Your Honor.

8 THE COURT: Mr. Jewkes.

9 MR. JEWKES: Yes. Your Honor, may it  
10 please the Court?

11 THE COURT: Mr. Jewkes.

12 CROSS-EXAMINATION

13 BY MR. JEWKES:

14 Q. Good morning, Mr. Palomares.

15 A. Good morning.

16 Q. Okay. On March 7, 2014, when you went to  
17 New Mexico Southern, who had decided that you would  
18 be the case agent? Explain to us how that worked.

19 A. Basically, it's up to our supervisor.  
20 We're in kind of a rotation between different  
21 agents, who gets the next case.

22 Q. Okay. So your name just kind of came up  
23 in the draw, more or less? Would that be accurate?

24 A. Yes, sir.

25 Q. Would you explain to the jury just what a

1 case agent is and what he or she does, please?

2 A. A case agent is responsible for the  
3 operation, oversees the whole operation. If any  
4 interviews need to be conducted, I can do the  
5 interviews or I can assign somebody, a different  
6 case agent, to assist with the investigation.  
7 Overall, I'm responsible for all of the  
8 investigation.

9 Q. Do you make the ultimate decision  
10 regarding the collection and preservation of  
11 physical evidence?

12 A. No, I don't.

13 Q. You do not?

14 A. No.

15 Q. Who does?

16 A. Well, we have a different crime -- that's  
17 why, as a case agent, I don't recover evidence  
18 sometimes. Most of the time, evidence is recovered  
19 by a specialized team, which is called crime scene  
20 team. They are responsible for collecting all of  
21 the evidence.

22 Q. Are you kept abreast of what physical  
23 evidence is collected?

24 A. Yes.

25 Q. And who advises you as to what physical

1 evidence you have collected?

2 A. On this case, it would be the crime scene  
3 supervisor.

4 Q. Okay. And who was the crime scene  
5 supervisor that day?

6 A. Norman Rhoades.

7 Q. Did -- I assume Mr. Rhoades went out to  
8 New Mexico Southern?

9 A. Yes.

10 Q. On March 7?

11 A. Correct.

12 Q. Now, you -- when you got there, let's run  
13 through what happened. I believe you indicated that  
14 you spoke to correctional officers, COs; is that  
15 correct?

16 A. Yes.

17 Q. And at what point in time did you look at  
18 the video that was shown to the jury earlier this  
19 morning?

20 A. Well, before conducting interviews, before  
21 going over the crime scene. Upon our arrival, I  
22 would say maybe within an hour, hour and a half,  
23 maybe.

24 Q. Now, let's back up a little. You've been  
25 out to New Mexico Southern a number of times, I

1 assume, and surveyed the situation out there; is  
2 that accurate?

3 A. That was the first time I went into the  
4 correctional facility.

5 Q. Okay. And did you ask questions about  
6 cameras and camera angles?

7 A. I didn't ask questions. They advised me  
8 how the camera angles work.

9 Q. In that particular pod that day, how many  
10 cameras were operating; do you know?

11 A. Two.

12 Q. Two. Both operational?

13 A. Yes.

14 Q. And do you happen to know at what angles  
15 they were positioned?

16 A. Angles? There's one on the left side of  
17 the pod and there's one on the right side of the  
18 pod.

19 Q. All right. Did you collect two videos  
20 that day?

21 A. It was the same video, but it shows two  
22 different cameras; the same CD.

23 Q. You sat here while the jury watched the  
24 video that was played earlier this morning, and it  
25 encompasses, oh, probably less than 10 minutes.

1 Would you agree with that?

2 A. Yes, sir.

3 Q. More or less, I mean --

4 A. Yes.

5 Q. The jury can do the math --

6 A. Right.

7 Q. -- someday. What about the events, in  
8 other words, things that happened before that? Did  
9 you collect any video prior to what we'll call the  
10 assault?

11 A. No, I didn't.

12 Q. Okay. Now, those cameras -- they operate  
13 seven days a week, 24 hours a day; do you agree?

14 A. Yes, sir.

15 Q. But yet all we have are just roughly that  
16 10-minute period.

17 A. Correct.

18 Q. Was there a reason why nothing was  
19 collected prior -- I mean, video showing what  
20 happened prior to the assault or after the assault?

21 A. No. At the time I was concentrating on  
22 solving the homicide. Everything was on video. I  
23 had no reason to go back to see who committed the  
24 assault.

25 Q. Well, during the course of your

1 investigation, were you ever led to believe that  
2 paperwork had been exchanged prior to the assault?

3 A. No, not initially.

4 Q. But later?

5 A. Later, yes, sir.

6 Q. How much later?

7 A. I'm not sure. Up to a year, maybe. I  
8 didn't keep track on how much longer, but some time  
9 had passed.

10 Q. After it came to your attention, did you  
11 make any attempt to secure the video of what  
12 occurred or didn't occur prior to the assault? Did  
13 you make any inquiries, make any attempts?

14 A. No, because at that time, FBI was already  
15 assisting with the investigation.

16 Q. With regard to the shank that you  
17 mentioned earlier, do you recall writing a report,  
18 I'm going to say, on or about March 21, 2014? And  
19 I'm not trying to take advantage of you, because I'm  
20 sure you've written many reports.

21 MR. JEWKES: May I approach the witness,  
22 Your Honor, to refresh his memory?

23 THE COURT: You may.

24 MR. JEWKES: Permission to approach the  
25 witness, Your Honor?



1 THE COURT: You may.

2 BY MR. JEWKES:

3 Q. Okay, Mr. Palomares, I'm going to let you  
4 look at that. Take whatever time you need, and then  
5 I'd like to ask you a few questions.

6 A. Okay.

7 MR. JEWKES: If I may, Your Honor, I'll  
8 retrieve it.

9 THE COURT: You may.

10 BY MR. JEWKES:

11 Q. All right. Mr. Palomares, you wrote a  
12 report concerning Mario Rodriguez, yes?

13 A. Yes.

14 Q. I'm referring to the one you just looked  
15 at.

16 A. Correct.

17 Q. And I believe it indicated that he was  
18 charged by the state authorities with tampering with  
19 evidence and possession of a deadly weapon.

20 A. Correct.

21 Q. What would that deadly weapon have been?

22 A. It would be a weapon, a shank.

23 Q. A shank?

24 A. Yes.

25 Q. And in that report you indicate that you

1 received a homemade knife, silver in color, from  
2 STIU Officer Maldonado?

3 MS. ARMIJO: Objection to the form of the  
4 question and counsel is putting in hearsay.

5 THE COURT: Well, let's don't have him  
6 just repeat what's in the report. If you want --  
7 his memory has been refreshed. If you want to just  
8 ask him, you may do so.

9 MR. JEWKES: I will. Yes, sir.

10 BY MR. JEWKES:

11 Q. Mr. Palomares, during the course of your  
12 investigation, did you receive a shank?

13 A. Yes, I did.

14 Q. From whom?

15 A. Which one are you talking about? The  
16 first ones or the last one?

17 Q. How many did you receive?

18 A. The initial investigation, I received  
19 three weapons. A couple weeks later, or a week  
20 later, I received an additional weapon.

21 Q. Did you ever receive a shank that you  
22 believed came from Mario Rodriguez?

23 A. No.

24 Q. You don't believe that Mario Rodriguez was  
25 ever in possession of a shank?

1           A.    He was in the possession of a shank at  
2 some point.

3           Q.    Sir?

4           A.    At some point.

5           Q.    At what point?

6           A.    In the initial incident when he went into  
7 the top shower, and he had possession of a shank  
8 initially when Mr. Molina was stabbed. He's the one  
9 that placed the shank inside a drain. That's why he  
10 was charged, because he was in possession of the  
11 shank at some point.

12          Q.    This particular shank was found where,  
13 sir; do you recall?

14          A.    According to correctional officers, it was  
15 found somewhere between the walls on one floor in  
16 the 1-5 area. I have to refer back to the report.

17          Q.    Mr. Palomares, Mario Rodriguez was charged  
18 by the district attorney's office with several  
19 charges in connection with the Molina homicide. Do  
20 you agree with that?

21          A.    Correct, two charges.

22          Q.    And what were those two charges?

23          A.    For having a weapon and tampering with  
24 evidence.

25          Q.    And what evidence presumably would have

1 been tampered with?

2 A. The first shank inside the shower, trying  
3 to get rid of the evidence.

4 Q. He was looking at some serious  
5 consequences under those state charges. Would you  
6 agree with that?

7 A. Two charges.

8 Q. Two charges, serious in nature; agreed?

9 A. Yes, sir.

10 Q. And now he's cooperating with the  
11 Government. Do you understand that?

12 A. If you're telling me, yes.

13 Q. Sir?

14 A. Yes, sir, if you're telling me, I do  
15 understand that.

16 Q. In reference to the video, how many of the  
17 videos have you actually viewed from March 7? Just  
18 one, or more than one?

19 A. The same video, two cameras.

20 Q. Different angles?

21 A. Yes, sir.

22 Q. During the course of watching the video,  
23 did you attempt to learn who the various actors  
24 were, figures were, in the video?

25 A. No, not at the time.

1 Q. What about later?

2 A. At that time, the FBI had already taken  
3 over the investigation.

4 Q. So you don't know who the different people  
5 are in the video?

6 A. Yes, I know the inmates.

7 Q. You know that now?

8 A. Yes.

9 Q. And do you know where Daniel Sanchez was  
10 during the time of the assault, from looking at the  
11 video?

12 A. Yes, sir.

13 Q. Where was he?

14 A. He was in the commons area, right next to  
15 a table.

16 Q. Okay. I'm just a little hard of hearing  
17 on the left side. One more time, sir. Where was  
18 it?

19 A. He was standing right next to a table in  
20 the commons area.

21 Q. In the common area?

22 A. Yes, sir.

23 Q. Okay. What -- did the video ever indicate  
24 that Daniel Sanchez went into Javier Molina's cell?

25 A. No, sir.

1 Q. Did it show him entering anybody else's  
2 cell but his own, Daniel Sanchez'?

3 A. No, sir. He didn't go into Javier  
4 Molina's cell.

5 Q. There came a point in time when the COs,  
6 the correctional officers, showed up and they  
7 ordered everyone to their individual cells. Would  
8 you agree with that?

9 A. Yes, sir.

10 Q. Basically it was a lockdown situation. Do  
11 you agree with that?

12 A. Correct.

13 Q. Mr. Palomares, do you happen to know how  
14 long Southern New Mexico maintains its videos? Is  
15 there a certain time period that they keep them?

16 A. I don't.

17 Q. They do not? You do not know, or they do  
18 not?

19 A. I don't know.

20 Q. Do you happen to know whether or not the  
21 video is stored on a master computer somewhere?

22 A. I don't know that.

23 Q. As the case agent, at least with regard to  
24 the state case, generally, you're in on -- or at  
25 least advised as to decisions made by the district

1 attorney's office. Would you agree with that?

2 A. Yes, sir.

3 Q. Now, when I say the district attorney's  
4 office, I'm talking about the state prosecutor as  
5 opposed to federal prosecutors.

6 A. Correct.

7 Q. And you would have remained the case agent  
8 while state charges were pending. Am I correct in  
9 that assumption?

10 A. Correct.

11 Q. And naturally, they would consult with you  
12 regarding any decisions they decided to make about  
13 the case?

14 A. Not all the time.

15 Q. Not all the time?

16 A. No, sir.

17 Q. Some of the time?

18 A. Sometimes.

19 Q. Many times?

20 A. Possible.

21 Q. Possible? Okay. You were aware that  
22 Jerry Armenta made a statement to the district  
23 attorney's office?

24 A. Yes, sir.

25 Q. And basically he indicated --

1 MS. ARMIJO: Objection, hearsay.

2 MR. JEWKES: I'll rephrase.

3 BY MR. JEWKES:

4 Q. Mr. Armenta reached an agreement with the  
5 district attorney's office, did he not?

6 A. I'm not sure what type of agreement was  
7 reached.

8 Q. Mr. Armenta agreed to 18 months.

9 MS. ARMIJO: Objection, foundation, and  
10 calling for hearsay.

11 THE COURT: Well, ask him if he knows this  
12 information before you ask the leading questions.  
13 So ask him if he knows.

14 MR. JEWKES: Yes, I will do that.

15 BY MR. JEWKES:

16 Q. Mr. Palomares?

17 A. Yes, sir.

18 Q. Do you know what, if any, agreement Jerry  
19 Armenta reached with the district attorney's office?

20 A. I don't recall, sir.

21 Q. Okay. Do you happen to know whether or  
22 not Mr. Armenta made written statements to try to  
23 clear another defendant? Do you know whether or not  
24 that occurred?

25 A. I don't know that, sir.



1 Q. You were never briefed by the district  
2 attorney's office regarding anything of that nature?

3 A. I don't recall being told by the district  
4 attorney's office.

5 Q. I'm sorry, sir?

6 A. I don't recall being told by the district  
7 attorney's office. I don't recall them telling me  
8 that information.

9 MR. JEWKES: May I have a moment with  
10 co-counsel, Your Honor?

11 THE COURT: You may.

12 MR. JEWKES: Pass the witness, Your Honor.

13 THE COURT: Thank you, Mr. Jewkes.

14 Ms. Bhalla, do you have cross-examination  
15 of Mr. Palomares?

16 MS. BHALLA: Yes, Your Honor, briefly.

17 THE COURT: Ms. Bhalla.

18 CROSS-EXAMINATION

19 BY MS. BHALLA:

20 Q. Good morning.

21 A. Good morning.

22 Q. As part of your investigation, did you  
23 ever review or were you made aware of a letter  
24 written by Mr. Armenta to Mr. Montoya's lawyer?

25 A. I don't recall.

1 Q. Would it refresh your recollection to take  
2 a look at it?

3 A. Yes, ma'am.

4 MS. BHALLA: May I approach, Your Honor?

5 THE COURT: You may.

6 MS. BHALLA: Your Honor, I'm going to mark  
7 this as Defendants' EL. We may not move for its  
8 admission at this time.

9 THE COURT: EL.

10 BY MS. BHALLA:

11 Q. Do you recall reading that letter before?

12 A. I believe it's the first time I read this  
13 letter.

14 Q. That's the first time you read that  
15 letter?

16 A. Yes, ma'am.

17 Q. Do you think that this would have been  
18 important to have seen during your investigation?

19 A. At some point.

20 MS. BHALLA: Okay. Thank you, Your Honor.  
21 I have no further questions.

22 THE COURT: Thank you, Ms. Bhalla.

23 Mr. Lowry, Ms. Duncan, do you have  
24 questions on behalf of Mr. Baca?

25 MS. DUNCAN: We have no questions, Your

1 Honor.

2 THE COURT: Thank you, Ms. Duncan.

3 All right, Ms. Armijo. You have redirect  
4 of Mr. Palomares?

5 MS. ARMIJO: Yes, Your Honor. I believe  
6 I'm going to show Exhibit Number 11, right where Mr.  
7 Villa ended off.

8 REDIRECT EXAMINATION

9 BY MS. ARMIJO:

10 Q. Sergeant Palomares, can you see the video  
11 on the screen?

12 A. Yes.

13 Q. All right. Now, who is the individual  
14 that I'm circling?

15 A. That's Daniel Sanchez, known as Dan Dan.

16 Q. All right. And is he seen down -- and I'm  
17 looking at the screen at 17:21:02:406. And is that  
18 his position on Exhibit Number 11 on the second  
19 camera view, I guess camera 5, throughout the video  
20 that you have?

21 A. Yes, ma'am.

22 Q. All right. Now, is it -- prior to -- I  
23 believe you said that you're a sergeant now, but  
24 prior to that, the unit that you were in, did they  
25 investigate lots of homicides?

1 A. Yes.

2 Q. Is it uncommon for you to initially charge  
3 or believe that certain people were involved, but  
4 then, later on, through the course of an  
5 investigation, learn that more people are involved?

6 A. No, it's not.

7 Q. Now, questions were asked of you about  
8 getting the video for the next door pod. At the  
9 time that you requested video and received video,  
10 did you have any information at that time that there  
11 were potentially things going on in the neighboring  
12 pod?

13 A. No.

14 Q. I believe you indicated it was more than a  
15 year later?

16 A. Roughly, yes.

17 Q. Now, through the course of your  
18 investigation, did you find out any information as  
19 to if any individual from the gang was running the  
20 pod in which Molina was killed?

21 MS. JACKS: Objection, hearsay.

22 THE COURT: How would he know that  
23 otherwise?

24 MS. ARMIJO: I'm just asking him a yes or  
25 no right now, if he knows that, and then I'll ask

1 him how he knows that.

2 THE COURT: Well, let's do it the other  
3 way. Let's find out what the foundation is for  
4 knowing this information.

5 MS. ARMIJO: And I didn't know if he does  
6 know it. That's what the question was.

7 BY MS. ARMIJO:

8 Q. Do you even know if there was anybody  
9 running the pod at the time of the Molina murder?

10 A. Not at the time. I learned it later.

11 Q. And I'm not asking you a person. I'm just  
12 asking you: How did you learn later?

13 A. I conducted an interview.

14 Q. Now, Mr. Villa was asking you specifically  
15 about Mr. Perez and if you were investigating him  
16 being threatened; is that correct?

17 A. Correct.

18 Q. Now --

19 MR. VILLA: Objection,  
20 mischaracterization, Your Honor. STIU was --

21 THE COURT: Let Ms. Armijo ask her  
22 question. Overruled.

23 BY MS. ARMIJO:

24 Q. Now, you indicated before that you went  
25 back on March 10th of 2014 to conduct additional

1 interviews; correct?

2 A. Correct.

3 Q. And when you did that, did you have an  
4 opportunity to speak to Mr. Perez?

5 A. Yes, I did.

6 Q. And when you did so, where was that  
7 interview held at?

8 A. It was at the offices there at the  
9 correctional facility.

10 Q. And did you use any force or threats when  
11 you spoke to him?

12 A. No.

13 Q. Did you make him any promises?

14 A. No.

15 Q. Did he appear to understand your  
16 questions?

17 A. Yes.

18 Q. Did you record the interview?

19 A. Yes, I did.

20 Q. And when you interviewed him, did he  
21 indicate to you, one way or another, whether or not  
22 he was a member of a gang?

23 A. Correct. He did.

24 Q. What did he say?

25 A. That he was a member of Sindicato de Nuevo

1 Mexico.

2 Q. And did you ask him anything in reference  
3 to his -- were you aware of whether or not he needed  
4 anything for assistance to walk at that time?

5 A. At that time, he needed a walker to walk.

6 Q. And did you ask him any questions about  
7 where he was during the time of the incident?

8 A. I did. He said he was in his holding  
9 cell.

10 Q. Did he tell you anything in reference to  
11 his -- to him being in the -- anything had been  
12 taken from him?

13 A. He did. He advised me -- referring to  
14 STIU, he advised me they took his walker away. He  
15 was referring to STIU.

16 Q. Okay. And did he indicate why it was  
17 taken away?

18 A. He advised me there was a piece missing.

19 Q. And did he indicate to you during that  
20 conversation how the piece was missing from his  
21 walker?

22 A. He advised me he was in the shower when  
23 his piece became missing.

24 Q. And did he indicate to you whether or not  
25 he knew who took the pieces from his walker?

1           A.     He advised me he had an idea who took it,  
2 and he was going to handle it on his own.

3           Q.     So he never provided you with a name?

4           A.     No.

5           Q.     And he indicated to you that when it was  
6 taken from him, he was in the shower?

7           A.     Correct.

8           Q.     And when you finished --

9           MS. JACKS: Your Honor, on behalf of Mr.  
10 Sanchez, we object to this entire line of  
11 questioning pursuant to the Sixth Amendment of the  
12 United States Constitution, and hearsay.

13           THE COURT: Hold on. I understand your  
14 objection.

15           Ladies and gentlemen, these statements  
16 that Mr. Palomares is reciting that Mr. Perez made  
17 can only be used against Mr. Perez. They can't be  
18 used against any of the other three gentlemen in the  
19 courtroom. So it can only be used in your  
20 deliberations about Mr. Perez.

21           All right, Ms. Armijo.

22           MS. ARMIJO: No further questions. Thank  
23 you.

24           THE COURT: Thank you, Ms. Armijo.

25           All right. Mr. Palomares -- do you have



1 more questions, Mr. Villa?

2 MR. VILLA: Just briefly, cross regarding  
3 that.

4 THE COURT: Mr. Villa.

5 RECROSS-EXAMINATION

6 BY MR. VILLA:

7 Q. Agent Palomares, you testified that Mr.  
8 Perez told you that STIU, the agency you were  
9 working with at New Mexico Department of  
10 Corrections, took his walker away from him; right?

11 MS. JACKS: Again, Your Honor, we would  
12 object, pursuant to the Sixth Amendment of the  
13 Constitution, and hearsay, and request --

14 THE COURT: I understand the objection.  
15 No more talking objections if I understand it. Same  
16 instructions for these questions from Mr. Villa.

17 Mr. Villa.

18 BY MR. VILLA:

19 Q. So it was that agency that he told you  
20 took away his walker?

21 A. Yes, sir. He referred to that, so at this  
22 time I was thinking he was referring to the  
23 correctional department officers.

24 Q. And he said that the reason the STIU took  
25 away his walker is because there was a piece missing

1 from the walker?

2 A. Yes, sir.

3 Q. And it was your testimony that Mr. Perez  
4 told you that it came up missing when he was in the  
5 shower?

6 A. Correct.

7 Q. And then he didn't have any idea who took  
8 it?

9 A. He said he had an idea.

10 Q. I apologize. I misstated that. He said  
11 he had an idea who took it, but he would take care  
12 of it?

13 A. Correct.

14 Q. If he specifically told you who took it,  
15 do you have any idea whether that would put him at  
16 risk or danger?

17 A. I don't know that at the time.

18 Q. You didn't think if you wrote in your  
19 police report that Mr. Perez told you who took a  
20 piece from his walker, that that police report being  
21 seen later by somebody else in the prison would put  
22 him in danger?

23 MS. ARMIJO: Objection, calls for  
24 speculation and foundation.

25 THE COURT: Well, he can ask if he knows.

1 If he doesn't know, he can state that, as well.

2 A. I would have put it in the report if he  
3 would have told me.

4 BY MR. VILLA:

5 Q. So my question is: Do you know whether  
6 putting that in your report would put Mr. Perez in  
7 danger?

8 A. Possibly.

9 Q. Possibly; right?

10 A. Yes, sir.

11 Q. Now, this agency that you were working  
12 with -- you testified on direct you were working  
13 with the STIU. Are you aware that they took a  
14 statement from Mr. Perez about this?

15 A. I believe so.

16 Q. And are you aware that the statement they  
17 took from Mr. Perez was that he was threatened?

18 MS. ARMIJO: Objection, Your Honor.  
19 Hearsay.

20 MR. VILLA: Your Honor, I'm --

21 MS. JACKS: I would also object.

22 MR. VILLA: May I approach?

23 THE COURT: Well, you can approach.

24 (The following proceedings were held at  
25 the bench.)

1 THE COURT: I just don't think that we're  
2 getting any sort of relevant information here.  
3 You're just trying to get in hearsay statements of  
4 other people. But I don't know what it really --  
5 what benefit it has as far as exploring his state of  
6 mind.

7 MR. VILLA: Well, and Your Honor --

8 THE COURT: That's very, very marginal.  
9 In fact, I'm not seeing any relevance to it.

10 MR. VILLA: I'm offering it for  
11 impeachment purposes under Rule 806.

12 THE COURT: I'm not seeing any impeachment  
13 value of it.

14 MR. VILLA: If I could make a record, Your  
15 Honor.

16 THE COURT: Certainly.

17 MR. VILLA: Agent Palomares testified that  
18 Mr. Perez told him that a piece came up missing in  
19 the shower, and that's a statement that's admissible  
20 under Rule 801(d)(2) as an admission of a party  
21 opponent; correct? And the statement that I'm  
22 offering is a statement that would impeach Mr.  
23 Perez' statement to Agent Palomares. And under Rule  
24 806, when a hearsay statement or a statement  
25 described in Rule 801(d)(2) has been admitted, it

1 will be admitted evidence, the declarant's  
2 credibility may be attacked and then supported by  
3 any evidence that would be admissible for those  
4 purposes if the declarant had testified as a  
5 witness. And so under Rule 806, I'm entitled to  
6 offer this other statement from Mr. Perez as  
7 impeachment of the statement that he gave to Agent  
8 Palomares.

9 THE COURT: He's already testified he  
10 doesn't know the information. He doesn't know about  
11 this statement, so why blurt it out in front of the  
12 jury here?

13 MR. VILLA: Well, Your Honor, because if I  
14 want to question another STIU agent about that  
15 statement, I first have to confront Mr. Palomares  
16 with it, whether he knows about it. So that is the  
17 purpose that I would be admitting it through another  
18 STIU agent, would be for impeachment of Mr.  
19 Palomares' hearsay statement Mr. Perez made. And  
20 before I can do that, I've got to confront him with  
21 the statement whether he knows about it. If he  
22 doesn't know, he doesn't know.

23 MR. CASTELLANO: Agent Palomares?

24 THE COURT: Mr. Palomares?

25 Why don't you let him in over here?

1           Why don't you come right here. Mr. Villa  
2 is going to ask you a question about whether you  
3 know a statement. Let's see if you know the  
4 statement before you blurt it out in front of the  
5 jury.

6 BY MR. VILLA:

7           Q. Sergeant Palomares, do you know if Mr.  
8 Perez made a statement as to STIU during the course  
9 of your investigation that he was threatened at the  
10 time the piece was taken from his walker?

11          A. No, sir.

12           MR. VILLA: And so I just want to make  
13 sure it's clear that when I confront STIU officers  
14 about this, that I offered him the opportunity  
15 whether he knew about the statement.

16           THE COURT: Well, he didn't. So I don't  
17 think you need to do this in front of the jury. Do  
18 you?

19           MR. VILLA: I mean --

20           THE COURT: On this particular point, I  
21 tend to agree under the rules of evidence, this may  
22 be something people want to look at over the  
23 weekend. I tend to agree with you that -- and I  
24 think Salzberg does, too -- that this is probably  
25 admissible if you can figure out how to get it in

1 without being a hearsay statement. The problem is  
2 that every circuit that's looked at this issue --  
3 and I think there are three -- the Tenth has not  
4 admitted it, and it's good reasons for how they're  
5 coming out. So I think you're going to have to  
6 really look at this, because it's not -- it's not a  
7 slam/dunk that this is admissible. I think in a  
8 theoretical academic sense I agree with you, and so  
9 do the scholars. But the case law is decidedly  
10 against you on this. So you're going to have to  
11 work to get me to adopt the position that the case  
12 law is against. But I think this deals with this  
13 problem right this minute; right?

14 MR. VILLA: I don't think we need Sergeant  
15 Palomares anymore, but I would add other things for  
16 the record about why I should ask him this question  
17 in front of the jury and just a couple of things I  
18 want to put on the record.

19 THE COURT: Go ahead and put them on.  
20 You can go back to your seat. Thank you,  
21 Mr. Palomares.

22 MR. VILLA: So Your Honor, under the rule  
23 of completeness, a lot of people think --

24 THE COURT: That just applies to writings.  
25 So it doesn't apply to oral statements.

1 MR. VILLA: Well, I guess I'll look at  
2 that.

3 THE COURT: What's your next one?

4 MR. VILLA: The other one is the trial  
5 brief that Ms. Fox-Young filed.

6 THE COURT: Yeah.

7 MR. VILLA: It talks about the defendant's  
8 right to put on evidence even if it's in violation  
9 of the rules of evidence. So I would just adopt  
10 that trial brief. Do you remember the document? It  
11 was filed last night. We'll get you the document  
12 number.

13 THE COURT: I've got a copy of it, and  
14 I'll take a look at it. I know what you're trying  
15 to do. Everybody is going to get a fair trial, and  
16 I'll try to make sure Mr. Perez gets a fair trial,  
17 but I do have to observe the rules of evidence and  
18 that's just the way it will have to be.

19 MR. CASTELLANO: Then we understand what  
20 they're trying to do also is bring in self-serving  
21 hearsay by the defendant. An example would be a  
22 defendant who talks to law enforcement, says, "I'm  
23 innocent of this charge; I don't know anything about  
24 it." Of course, the defense would want to bring it  
25 in. It's still hearsay even though --



1 THE COURT: It is, and I keep that out of  
2 every case. If you're going to take the stand, you  
3 know that's the quid pro quo.

4 MR. VILLA: I agree that it doesn't fit  
5 the 803 or 804 exception to hearsay. I think if  
6 it's the 806 --

7 THE COURT: Do you have anything on this  
8 particular point? We can take this up a little  
9 later.

10 MR. VILLA: No, Your Honor, I want to make  
11 sure it's clear that our position is that the  
12 authorities we cite in the trial brief allow us to  
13 make this argument.

14 MS. JACKS: We need to make a record, as  
15 well, with respect to the statement that Mr. Villa  
16 just said in front of the jury that was a statement  
17 that Mr. Perez made to STIU that this Court found in  
18 pretrial hearings was testimonial and was excluded  
19 from this trial. I'm trying to keep it out. I  
20 would simply note that has been brought out contrary  
21 to the Court's ruling.

22 THE COURT: He didn't get very far before  
23 it got cut off.

24 MS. JACKS: I think he got far enough.  
25 The second thing, I would point out --

1 THE COURT: Hold on. Let me see. He got  
2 cut off after the word "threatened." Let's move on.

3 MS. JACKS: But I do think, just as a  
4 courtesy to other defendants, that when the Court  
5 rules a statement is inadmissible, if other counsel  
6 want to bring it up, it's improper to do that in  
7 front of jury.

8 THE COURT: Mr. Villa. I've ruled that  
9 this is inadmissible, so don't try to bring it up in  
10 front of the jury without approaching the bench.

11 MR. VILLA: You mean with this witness or  
12 another witness?

13 THE COURT: Any witness. The statement is  
14 right at the moment inadmissible, so before you ask  
15 a question like that again, you're going to have to  
16 approach the bench.

17 MR. VILLA: So we expect some STIU agents  
18 who took the statement to testify. So you want me  
19 to approach the bench before asking the question?

20 THE COURT: Yes, because I don't see how  
21 this is admissible with this witness or any other.  
22 So before you ask any questions, as a courtesy to  
23 the Government and the other defendants, you're  
24 going to have to approach the bench.

25 MR. VILLA: Yes, Your Honor.

1 THE COURT: Okay.

2 MS. JACKS: I'm not done. I would ask  
3 that the Court strike Mr. Villa's question and  
4 instruct the jury to disregard it.

5 THE COURT: Okay.

6 MS. JACKS: The second thing -- and I  
7 would move for a mistrial. The second thing is that  
8 Ms. Armijo's line of questioning bringing out Mr.  
9 Perez' statements was again bringing out clearly  
10 testimonial statements of Mr. Perez here in this  
11 joint trial. She may have a hearsay exception, but  
12 she doesn't have an exception to the Sixth  
13 Amendment, and it was inappropriate to bring that  
14 out, especially given the Court's prior rulings  
15 about other statements of Mr. Perez to law  
16 enforcement. And based on that objection, I also  
17 move for a mistrial.

18 MR. CASTELLANO: That statement was  
19 actually helpful to Daniel Sanchez because that  
20 statement indicated that Mr. Perez was in the shower  
21 when the shank was taken. So that didn't point the  
22 finger at anybody. It actually pointed the finger  
23 away from people. So it was a statement against  
24 interests and was not contrary to Mr. Sanchez'  
25 interests or Mr. Baca's.

1 THE COURT: Did you have something?

2 MR. LOWRY: I'd like to make a record, but  
3 I can wait till before we break for lunch. I don't  
4 want to keep the jury waiting.

5 MR. CASTELLANO: Move to strike the  
6 question.

7 (The following proceedings were held in  
8 open court.)

9 THE COURT: All right. Ladies and  
10 gentlemen, I'm not going to permit the answer to the  
11 question that Mr. Villa started. If you caught any  
12 of it before all the objections were made, I strike  
13 the question, as well. So don't even consider the  
14 question, which is not what you should be doing  
15 anyway. You should be considering the answer. But  
16 in this case, I want you to strike the question and  
17 not even consider it.

18 All right, Mr. Villa. Anything further?

19 MR. VILLA: Just a couple more questions,  
20 Your Honor.

21 THE COURT: All right. Mr. Villa.

22 BY MR. VILLA:

23 Q. Agent Palomares, the walker that Mr. Perez  
24 had -- you actually saw him with this walker earlier  
25 in your investigation; correct?

1 A. Yes, sir.

2 Q. He was using the walker to walk because he  
3 couldn't walk without it; right?

4 A. Correct.

5 Q. And when you learned from Mr. Perez that  
6 STIU took the walker away, as the case agent in this  
7 case, you're responsible for all the evidence in  
8 this case; correct?

9 A. Correct.

10 Q. And that walker that Mr. Perez said was  
11 taken away from him by the STIU, who was working  
12 with you -- that at that point you knew that was  
13 evidence, didn't you?

14 A. No, sir.

15 Q. You didn't think that was evidence?

16 A. No.

17 Q. And because of that, you never went and  
18 tried to get the walker and preserve the walker for  
19 this trial, did you?

20 A. Correct.

21 Q. The walker is gone, isn't it?

22 A. I'm sure.

23 Q. The jury is not going to ever be able to  
24 get to see the walker in this case, are they?

25 A. I'm not sure, sir.

1 Q. You don't know the answer to that?

2 A. No, sir.

3 MR. VILLA: That's all the questions I  
4 have.

5 THE COURT: Thank you, Mr. Villa.

6 MS. JACKS: Your Honor, may I ask the  
7 Court give a limiting instruction? I think  
8 everything up until the bench conference was  
9 admissible against only Mr. Perez, and everything  
10 after the bench conference I think sounds like it  
11 was admissible against everyone. I want to make it  
12 clear.

13 THE COURT: I think Ms. Jacks has  
14 summarized my instruction to you. So the portions  
15 that were before the bench conference where Mr.  
16 Villa was soliciting some statements of Mr. Perez  
17 are only admissible against and can be considered  
18 against Mr. Perez. Afterwards it's for everyone.

19 All right. Ms. Armijo, anything further  
20 from Mr. Palomares?

21 MS. ARMIJO: No, Your Honor. Thank you.

22 THE COURT: All right. Mr. Palomares, you  
23 may step down. Thank you for your testimony.

24 Is there any reason that Mr. Palomares  
25 cannot be excused from the proceedings. Ms. Armijo?

1 MS. ARMIJO: No, Your Honor.

2 MR. VILLA: Your Honor, we'd like to  
3 reserve him for the defense case. He doesn't need  
4 to stay in the courtroom.

5 THE COURT: You don't need to stay in the  
6 courthouse, but you are subject to recall and you  
7 can't stay in the courtroom. Thank you, Mr.  
8 Palomares. Thank you for your testimony.

9 All right. Does the Government have its  
10 next witness or evidence?

11 MR. BECK: Your Honor, the United States  
12 calls Javier Rubio.

13 THE COURT: Let me see counsel up here at  
14 the bench before we begin.

15 (The following proceedings were held at  
16 the bench.)

17 THE COURT: All right. I have looked at  
18 the statements. I think I'm inclined to think it's  
19 going to satisfy all the requirements of the  
20 co-conspirator statement with the exception of one  
21 that I am going to need to hear a lot of evidence  
22 in, and you've already agreed that you're going to  
23 approach the bench before trying to get these  
24 statements in, the ones that we're talking about in  
25 this letter.

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1 I think I'm not sure that it's been  
2 established yet, from what I have seen, that Mr.  
3 Mendez is a part of the conspiracy. So you're going  
4 to have to really give me some evidence on that.  
5 Certainly if he had the power to approve the death  
6 and the murder and those sort of things, then I  
7 guess I would think that that would be part of the  
8 conspiracy, and you could ask him. But if all he's  
9 got is maybe a negative, he could, like, veto or  
10 something like that, I'm not sure that would make  
11 him part of the conspiracy. You may have other  
12 things there, but that's really what I'm going to be  
13 focusing on.

14 So before you try to elicit any statements  
15 that are in the letter, approach the bench and let  
16 me see if I am satisfied -- that I'm convinced that  
17 Mendez is part of the conspiracy. You were nodding  
18 your head, yes, I'm focusing on the right issue.

19 MR. LOWRY: And there is one additional  
20 one, Your Honor. There is this statement here.

21 THE COURT: Go ahead and speak up.

22 MR. LOWRY: There is a statement here that  
23 sometime after the Molina murder that Mr. Rubio was  
24 approached by Alex Munoz and Juan Mendez.

25 THE COURT: Let me see this. There was



1 one I didn't see. Yeah, I don't see that one as  
2 coming in unless you've got some other statement.  
3 Do you agree?

4 MR. BECK: I agree. I'm not eliciting  
5 that statement.

6 MR. LOWRY: And the Mendez statement.

7 MR. BECK: So I'm not eliciting that  
8 second statement, I think.

9 THE COURT: I don't think it's the second.

10 MR. BECK: The one that Mr. Lowry was just  
11 talking about. I think Mr. Rubio will also testify  
12 that Mr. Mendez was the shot-caller, he had to  
13 approve the hit, and that if not all of the  
14 shot-callers in that SNM pod, including Mr. Rubio  
15 approved the hit, if one of them found out about it,  
16 they would have stopped the hit, not knowing that it  
17 was a valid hit.

18 THE COURT: Is the testimony just going to  
19 be that he had a veto power, or is it going to be  
20 that Mr. Mendez had to actually approve and say,  
21 "Yes, go"?

22 MR. BECK: I don't know.

23 MR. LOWRY: Your Honor, can I just point  
24 this out? If you look at this last statement, it  
25 doesn't appear that Mr. Rubio was part of the

1 conspiracy. Because it says that they called the  
2 hit without ever consulting Mr. Rubio. So I'm  
3 questioning whether there is even a co-conspirator  
4 statement if there is sufficient cooperation.

5 THE COURT: My memory is -- and I could be  
6 refreshed on this -- but my memory is that we  
7 established Rubio was a member of the conspiracy  
8 back in the original James hearing.

9 MR. LOWRY: I don't think we did.

10 MR. BECK: I don't know. I think Mr.  
11 Rubio's position would be just like Mr. Mendez'. So  
12 I think this will also be -- we will see where it  
13 goes.

14 THE COURT: Well, okay. You'll need to  
15 establish that --

16 MR. BECK: Sure.

17 THE COURT: -- if my memory is wrong, but  
18 I will say this. I have less concern about Rubio  
19 being part of the conspiracy than I do Mendez.  
20 Mendez is where I think the linchpin is.

21 MR. MAYNARD: On this point, Your Honor --

22 THE COURT: Yes.

23 MR. MAYNARD: There is an earlier 302  
24 reflecting a statement by Mr. Rubio to the FBI where  
25 he says he wasn't sure that Mendez was even involved

1 in the conspiracy or involved in the decisions. So  
2 it raises the question, and Mendez is on your  
3 witness list, I understand. So if that is to come  
4 in, it should come in through Mendez. It looks like  
5 bootstrapping a claim of the conspiracy statutes,  
6 which is not independently shown. And of course, if  
7 we do this in front of the jury, can you give the  
8 jury another limiting instruction? This should not  
9 be done through Rubio at this juncture.

10 MR. BECK: As I said, I'll approach the  
11 bench before I get into any of these statements, if  
12 the evidence does not play out the way I anticipate  
13 it will. I understand it's inadmissible; it's not a  
14 co-conspirator statement.

15 THE COURT: Does the fact that we have  
16 this 302 -- does that give you some concern?

17 MR. BECK: It does.

18 THE COURT: It might get impeached. I'm  
19 not trying to tell you how to try the case. But I  
20 wonder from a tactical standpoint if it makes sense  
21 to bring it through --

22 MR. BECK: Sure.

23 MR. MAYNARD: Even if the defense wins,  
24 we've had to fight a defensive battle, and we  
25 haven't gained anything. And it is --

1 MR. BECK: It is admissible once it's a  
2 co-conspirator. So it doesn't matter it's coming in  
3 through Rubio as opposed to Mendez. As I said, if  
4 the evidence doesn't play out as I expect it to, I'm  
5 not going to bring out that testimony.

6 THE COURT: Let's see how the cross goes,  
7 and then we may have to revisit this. And I promise  
8 we'll revisit it before.

9 MR. MAYNARD: There may be a juncture  
10 where I'd like to cover these admissibility issues  
11 outside the presence of the jury, because this is,  
12 like, tiptoeing around them.

13 THE COURT: It's tough. It's tough. It  
14 is. But I think we're doing okay.

15 MS. JACKS: Your Honor, on behalf of Mr.  
16 Sanchez, we would object based on the arguments that  
17 have just been made. I believe there is also a  
18 statement of Carlos Herrera to Mr. Rubio. The  
19 Government is intending --

20 MR. BECK: There is an admission.

21 MS. JACKS: This goes back to the issue  
22 that I don't think we've settled. The Court has  
23 decided, but I still have argument on it whether  
24 it's appropriate at a joint trial to bring in  
25 admissions of co-defendants that will serve to

1 corroborate informants in this case.

2 THE COURT: Yeah, well --

3 MS. JACKS: I don't think I actually have.

4 And I'd like to argue this before --

5 THE COURT: Look at Tennessee versus  
6 Street, because the confrontation clause does permit  
7 uncontroverted out-of-court statements to be used for  
8 nonhearsay purposes. So I just think -- I know you  
9 keep saying that, but I think that's just a loser.

10 MS. JACKS: I do have some arguments based  
11 on Richardson versus Marsh.

12 THE COURT: Look at Tennessee versus  
13 Street.

14 MS. JACKS: I'll preserve --

15 MR. MAYNARD: Our objection is preserved,  
16 Your Honor.

17 THE COURT: You bet.

18 MS. ARMIJO: I'm assuming defense does not  
19 object to correctional officers. I believe the U.S.  
20 Marshals asked me to triple-check with the Court and  
21 defense counsel. This will be our first witness  
22 that is in custody. And so I believe the Marshal's  
23 Office had corrections officers come and be by him,  
24 and they will not be in suits. They will be in  
25 their normal garb.

1 MR. MAYNARD: Is that necessary?

2 THE COURT: I thought y'all wanted this.

3 MS. ARMIJO: I thought you wanted this.

4 THE COURT: I thought y'all wanted this.

5 We agreed when we brought in these cooperators you  
6 didn't mind the security being here. I think we've  
7 decided this issue.

8 MS. JACKS: I thought we did decide.

9 MS. ARMIJO: I thought it was decided.  
10 I'm making sure.

11 THE COURT: This isn't y'all's client.  
12 This is their informants, and they're going to be  
13 guarded.

14 MR. MAYNARD: They need an escort.

15 THE COURT: Seems like we decided that.  
16 We decided this before. And to pull this back in  
17 the middle of trial creates some real logistical  
18 issues.

19 MS. BHALLA: I'm sorry, I think I  
20 misunderstood.

21 MS. FOX-YOUNG: I wasn't here on Friday.

22 THE COURT: It was long before Friday.  
23 This was decided, and you're going back on your word  
24 as far as logistics. Everybody agreed for your  
25 defendants we'd take great precautions. Everybody

1 else, we're going to bring them in in jump suits and  
2 we've got guards.

3 MS. FOX-YOUNG: Are we going to have  
4 several guards? How many guards are there going to  
5 be?

6 MS. ARMIJO: I believe it was decided two.

7 THE COURT: Where are they going to be  
8 positioned?

9 MS. ARMIJO: I believe right next to him.

10 THE COURT: Okay. Does that work?

11 MS. ARMIJO: And they are not in suits.

12 THE COURT: They're not in suits.

13 MS. FOX-YOUNG: For the record, I object.  
14 I'm not going to back on my word, Judge. I don't  
15 recall.

16 THE COURT: You are. Everyone else in  
17 agreement?

18 MS. JACKS: Yes, we agreed on this before.

19 I have one more thing, and this is my  
20 request to the Court, my objection to the admission  
21 of the co-defendants' admissions be a continuing one  
22 so I don't have to get up and state every time.

23 THE COURT: Sure. You probably need to  
24 tell me you need a limiting instruction.

25 MS. JACKS: That would be my next

1 objection.

2 THE COURT: Tell me when you want it.

3 MS. DUNCAN: I would just join the  
4 objection of Mr. Sanchez also as to the statements  
5 of Rudy Perez, and we'd ask for the same thing --

6 THE COURT: All right.

7 MS. DUNCAN: -- and Mr. Herrera.

8 THE COURT: Just alert me when you want a  
9 limiting instruction. I'll need a little help with  
10 that.

11 MS. JACKS: The other thing I would  
12 request, to the extent the Court gives the limiting  
13 instruction, if it can set a range, like, say, "No,  
14 this is admissible to everyone else." Do you know  
15 what I mean? Because it's very different.

16 THE COURT: I'll try, but y'all help me.

17 MS. JACKS: Sure.

18 MS. DUNCAN: Thank you, Your Honor.

19 (The following proceedings were held in  
20 open court.)

21 THE COURT: All right. Mr. Rubio, if you  
22 will come in and be seated, before you're seated, my  
23 courtroom deputy, Ms. Standridge, will swear you in.  
24 So if you'll raise your right hand to the best of  
25 your ability there.



1 JAVIER RUBIO,  
2 after having been first duly sworn under oath,  
3 was questioned, and testified as follows:

4 THE CLERK: Please be seated. State and  
5 spell your name for the record.

6 THE WITNESS: Javier Rubio.

7 THE COURT: Mr. Rubio. Mr. Beck.

8 DIRECT EXAMINATION

9 BY MR. BECK:

10 Q. Mr. Rubio, are you now or were you ever a  
11 member of the Sindicato de Nuevo Mexico Prison Gang?

12 A. Yes.

13 Q. Are you now a member of the Sindicato de  
14 Nuevo Mexico?

15 A. Yes.

16 Q. How long have you been a member of the  
17 SNM?

18 A. Twenty-four years.

19 Q. Do you go by any other names besides  
20 Javier Rubio?

21 A. AB.

22 Q. When were you brought into the SNM?

23 A. 1994.

24 Q. Where were you when you were brought in?

25 A. At the South facility in Santa Fe.

1 Q. And who were the SNM members who brought  
2 you into the gang?

3 A. Tony Perez, and I can't remember the other  
4 guy's name.

5 Q. And in 1994, why were you at the  
6 Penitentiary of New Mexico?

7 A. I was there serving a sentence for murder.

8 Q. And what happened? What were the  
9 circumstances?

10 A. During a burglary, I committed a murder.

11 Q. How old were you?

12 A. 18.

13 MR. BECK: Your Honor, I'm going to show  
14 to defense and move to admit 253 A, which is Bates  
15 No. 48480.

16 MS. JACKS: Can we please have the exhibit  
17 number again, please?

18 THE COURT: 253 A. Any objection from the  
19 Defendants?

20 MS. JACKS: No, Your Honor.

21 THE COURT: Not hearing any, then  
22 Government's Exhibit 253 A will be admitted into  
23 evidence.

24 (Government Exhibit 253 A admitted.)  
25

1 BY MR. BECK:

2 Q. Mr. Rubio, is that a photograph of you?

3 A. Yes.

4 Q. And is that your back pictured below your  
5 head on Exhibit 253 A?

6 A. Yes.

7 Q. What is that a tattoo of?

8 A. SNM.

9 Q. Can anyone just get an SNM tattoo inside  
10 the prisons?

11 A. No. It has to be earned through violence.

12 Q. Have you ever heard the term "earning your  
13 bones"?

14 A. Yes.

15 Q. What does that mean?

16 A. You have to murder someone.

17 Q. Is that the only way somebody can earn  
18 your bones?

19 A. You can assault someone.

20 Q. How did you earn your bones?

21 A. I assaulted someone. I stabbed someone.

22 Q. When was that?

23 A. '94.

24 Q. Did you also stab -- and I want to be  
25 clear on this. Was that assault in 1994 to gain

1 membership into the SNM?

2 A. Yes.

3 Q. When you were brought in in 1994, who was  
4 the leader of the SNM?

5 A. Angel Munoz.

6 MR. BECK: Your Honor, I'm going to move  
7 to admit Exhibit 253 B, and I'll show that picture  
8 to the defense counsel.

9 Move to admit Exhibit 253 B, Your Honor.

10 THE COURT: Any objection from the  
11 Defendants?

12 MR. LOWRY: No, Your Honor.

13 THE COURT: Not hearing any objection,  
14 Government's Exhibit 253 B will be admitted into  
15 evidence.

16 (Government Exhibit 253 B admitted.)

17 BY MR. BECK:

18 Q. Mr. Rubio, is that you pictured on the  
19 bottom left, second from the left, in this  
20 photograph?

21 A. Yes.

22 Q. And who is at the top left of that  
23 photograph?

24 A. Angel Munoz.

25 Q. Is that Angel Munoz who was the leader

1 when you were brought into the gang?

2 A. Yes.

3 Q. Were there other leaders below Mr. Munoz?

4 A. Yes.

5 Q. Who was that?

6 A. Billy Garcia, Styx, Marty Barros. There  
7 was various other ones.

8 Q. Was Julian Romero a leader at that time?

9 A. Romero was one, yes.

10 Q. Do you know Styx's real name?

11 A. No.

12 Q. Are you familiar with the defendant  
13 sitting in the back of the courtroom, Anthony Ray  
14 Baca?

15 A. Yes.

16 Q. At some point, was he the leader of the  
17 SNM?

18 A. Yes.

19 Q. When was that?

20 A. When Angel got out in '99, 2000.

21 Q. And is Mr. Baca still the leader of the  
22 SNM?

23 A. Yes.

24 Q. In your opinion, what's the purpose of the  
25 SNM?

1 A. Control the prison system.

2 Q. And how does the SNM do that?

3 A. Through violence and extortion.

4 Q. Does the SNM interact in any way with  
5 drugs in prison?

6 A. Yes.

7 Q. How do they do that?

8 A. Sell drugs, do drugs.

9 Q. If someone who is not an SNM member brings  
10 in drugs into a pod that has SNM members, what  
11 happens?

12 A. They have to give SNM drugs.

13 Q. If an SNM member brings in drugs into an  
14 SNM pod, what happens?

15 A. He has to share it, as well.

16 Q. Have SNM members shared drugs with you  
17 over the years?

18 A. Yes.

19 Q. What drugs?

20 A. Heroin, cocaine, marijuana.

21 Q. I want to talk to you about some of the  
22 rules of the SNM. Is an SNM member allowed to  
23 cooperate with law enforcement?

24 A. No.

25 Q. How is an SNM member admitted to the SNM?

1 A. He has to commit an act of violence.

2 Q. Does he also have to have certain SNM  
3 members vouch for him or raise their hands for him?

4 A. Yes.

5 Q. How many?

6 A. Two or three.

7 Q. Has that always been consistent, or has  
8 that changed over the years?

9 A. It's changed.

10 Q. Can someone with a sex offense in their  
11 personal history be admitted?

12 MR. LOWRY: Objection, Your Honor, as  
13 leading.

14 A. No.

15 THE COURT: Leading? Overruled.

16 BY MR. BECK:

17 Q. And Mr. Rubio, if there is an objection  
18 like that, just hold your answer until afterwards.  
19 Thank you.

20 Are there certain repercussions for  
21 violation of these rules?

22 A. Yes.

23 Q. What are those?

24 A. Murder, get killed.

25 Q. Are there others?

1 A. You could get beat up.

2 Q. And what does that repercussion depend on?

3 A. It depends on the rules that are set, the  
4 severity of the rule that you broke.

5 Q. What would be the most severe rule, in  
6 your experience?

7 A. To snitch, to not commit an act of  
8 violence when you're told to.

9 Q. What does "snitching" mean?

10 A. You tell on somebody.

11 Q. Do you just tell on someone to anyone  
12 else, or are you telling on someone to specific  
13 people?

14 A. To prison officials.

15 Q. Does the SNM have homemade weapons?

16 A. Yes.

17 Q. Are those shanks?

18 A. Shanks.

19 Q. How are shanks kept within an SNM pod?

20 A. Usually anybody could have them, but  
21 sometimes there's people that are designated to hold  
22 them.

23 Q. Does it depend on the pod you're in?

24 A. Yes.

25 Q. Do SNM members take their shanks into the



1 yard?

2 A. Yes.

3 Q. What's the yard?

4 A. It's a recreation yard where everybody  
5 goes to.

6 Q. What happens if a non-SNM member has a  
7 shank in the yard and the SNM finds out?

8 A. They want to know why he has it, if he's  
9 trying to use it towards them, or anything of that  
10 matter.

11 Q. What's a tabla?

12 A. It's a board of leaders.

13 Q. I should have asked a better question.  
14 What's tabla with the SNM?

15 A. A certain group of people that have been  
16 appointed to be leaders and make decisions.

17 Q. Does that include leaders of the pods at a  
18 certain facility?

19 A. Yes.

20 Q. Did it include the leaders of the SNM pod  
21 at the Southern New Mexico Correctional Facility in  
22 2014?

23 A. Yes.

24 Q. Were you a member of that tabla?

25 A. I was.

1 Q. What happened if a member of the tabla  
2 orders a hit and a member that they tasked to do  
3 that doesn't perform?

4 A. He will be murdered.

5 Q. What happens if a member of a tabla gets  
6 an order to order a hit and doesn't follow through  
7 on that?

8 A. Same; he will be murdered.

9 Q. I think in 1994 you said you assaulted  
10 someone to earn your bones?

11 A. Yes.

12 Q. Did you do that to maintain or gain more  
13 of a reputation with the SNM?

14 A. Yes.

15 Q. In 1997 did you stab someone for the SNM?

16 A. Yes, I did.

17 Q. What happened?

18 A. I stabbed somebody who was considered an  
19 enemy to the SNM.

20 Q. Why did you do that?

21 A. To earn my bones.

22 Q. How do you know if something is an SNM hit  
23 or just a personal dispute?

24 A. Well, it has to be verified.

25 Q. What do you mean, "verified"?

1           A.     It has to be verified through the leaders,  
2     the people that are actually calling the hit. They  
3     have to verify that it's a legit hit, whether  
4     somebody, for whatever reason, he messed up or was  
5     supposed to get hit.

6           Q.     In 2002, did you participate in another  
7     hit because of your membership in the SNM?

8           A.     Yes.

9           Q.     What was that?

10          A.     It was on Frankie Gonzalez, because he had  
11     been at another facility in which an SNM Gang member  
12     had problems with somebody else, and he didn't do  
13     anything to help that SNM Gang member.

14          Q.     Why did that result in a hit on Frankie  
15     Gonzalez?

16          A.     Because he should have hit that guy, the  
17     one who had started the problems with the SNM Gang  
18     member.

19          Q.     Is that a rule of the SNM?

20          A.     Yes.

21          Q.     And what did you do? What was your role  
22     in that?

23          A.     I made sure that somebody assaulted him.

24          Q.     Did you call the hit?

25          A.     Yes.

1 Q. That is what you were saying about  
2 verifying earlier?

3 A. Yes.

4 Q. So you verified it?

5 A. I verified that he was there and didn't do  
6 what he was supposed to do.

7 Q. Was there an earlier stabbing that you  
8 participated in as an SNM member related to that  
9 same incident?

10 A. Yes.

11 Q. And tell us about that.

12 A. The guy that disrespected SNM ended up in  
13 the same pod I was living in. And I had him hit,  
14 too, as well. I made the shank and --

15 Q. What did you make the shank out of?

16 A. A Scrabble board piece.

17 Q. What do you mean?

18 A. A Scrabble board comes with a little piece  
19 of wood. I made a shank out of that.

20 Q. Is that the piece of wood where you hold  
21 letters for the Scrabble?

22 A. Yes.

23 Q. And you made a shank out of that piece?

24 A. Yes.

25 Q. Is it fair to say that you received some

1 benefits for agreeing to cooperate with us in this  
2 case?

3 A. Yes.

4 Q. Were you told -- the Government didn't  
5 indict you in any of its SNM --

6 A. No.

7 Q. -- in this SNM case?

8 A. No.

9 Q. Did you ask Special Agent Acee to help  
10 reduce your state sentence?

11 A. Well, I asked him if he could testify for  
12 me at my parole hearing.

13 Q. Do you expect that he'll do that?

14 A. Yes.

15 Q. What do you have to do for him to do that?

16 A. Tell the truth.

17 Q. While you were in the Corrections  
18 Department after you agreed to cooperate, were you  
19 allowed more telephone calls than a regular Level 6  
20 inmate?

21 A. Yes.

22 Q. Were you allowed more tier time than  
23 regular Level 6 inmates?

24 A. Yes.

25 Q. Were you allowed contact visits even

1     though you're an SNM member?

2             A.     Yes.

3             Q.     Did you attend a pizza party?

4             A.     Yes.

5             Q.     But those benefits stopped?

6             A.     Yes, they did.

7             Q.     When did they stop?

8             A.     When I got caught having sex with my wife.

9             Q.     When was that?

10            A.     January of 2017.

11            Q.     Were you allowed to have sex with your  
12     wife?

13            A.     No.

14            Q.     Why did you do that?

15            A.     Human nature. I've been in prison 24  
16     years.

17            Q.     What happened to you after that?

18            A.     I had to do nine months in solitary  
19     confinement. I lost all my good time. I lost all  
20     my privileges for a year.

21            Q.     So you were reprimanded for that?

22            A.     Yes.

23            Q.     What does it mean to lose all of your good  
24     time?

25            A.     You earn one day for every day you do in

1 prison. You're able to work your way up to doing  
2 half the time you have to do. I lost about 20 years  
3 of it.

4 Q. How many years of good time did you lose?

5 A. About 20 years.

6 Q. Did you interact with Mr. Baca at the  
7 Southern New Mexico Correctional Facility in 2008?

8 A. Yes.

9 Q. And I want to talk to you about when Mr.  
10 Baca came down, what happened at Southern. Did he  
11 want to put in place some kind of structure?

12 A. Yes, he did. He appointed --

13 Q. Hold on one second there. Did you have --  
14 did you learn this in conversation with Mr. Baca?

15 A. Yes, I did.

16 Q. And did he -- were there other people  
17 around when he was telling you this, or just you?

18 A. There was other people around.

19 Q. All right. So what did Mr. Baca want to  
20 do when he came down to Southern in 2008?

21 A. He wanted to appoint certain people to run  
22 the pods. He wanted to write out a set of rules for  
23 people to follow and make sure that those people  
24 that run the pods follow those rules.

25 Q. Do those people that run the pods report

1 to him?

2 A. Yes.

3 Q. And the jury saw some of the facilities  
4 yesterday, and they saw a building that had three  
5 different sets of cell blocks. When you're talking  
6 about the pods, are you talking about the whole  
7 building or each of those sets with cell blocks in  
8 between?

9 A. Each of those sets. There was somebody  
10 running those.

11 Q. So I think we heard that there is -- the  
12 SNM facility there has a blue pod, a green pod, and  
13 a yellow pod.

14 A. Yes.

15 Q. So each one of those pods would have a  
16 leader or leaders?

17 A. Yes.

18 Q. How are those leaders chosen for each of  
19 the pods?

20 MR. LOWRY: Objection, Your Honor. He's  
21 asked and answered.

22 THE COURT: Overruled.

23 A. Everybody there has to vote who they  
24 choose as a leader.

25 THE COURT: Are you okay, Ms. Jacks?



1 MS. JACKS: I'm fine. I was trying to  
2 wait until Mr. Beck finished with what Mr. Baca  
3 allegedly told this witness, and ask the Court for  
4 the limiting instruction.

5 THE COURT: Mr. Rubio is going to make  
6 some -- in his testimony, he's going to relate to  
7 you some statements that he is testifying Mr. Baca  
8 made. Again, you can use these statements only in  
9 your deliberations regarding the charges against Mr.  
10 Baca. You can't use them in any way against the  
11 other three gentlemen in the courtroom.

12 All right, Mr. Beck.

13 BY MR. BECK:

14 Q. Just so we're clear, when you were talking  
15 about the structure Mr. Baca put in place, putting  
16 leaders in the pods, those were from conversations  
17 that you had with Mr. Baca; right?

18 A. Yes.

19 Q. And now, I think you said people were  
20 going to vote who they wanted to be a leader in each  
21 of the pods?

22 A. Yes.

23 Q. Were you voted a leader for the green pod?

24 A. I was.

25 Q. Was there another leader for the green

1 pod?

2 A. Jesse Sedillo.

3 Q. When were you voted leader?

4 A. 2008.

5 Q. Were you still the leader in 2014, March  
6 of 2014?

7 A. Yes.

8 Q. I want to talk to you about the rules that  
9 you said Mr. Baca wanted to put in place. Did you  
10 learn from Mr. Baca about a set of rules?

11 A. Yes.

12 Q. How did you learn from Mr. Baca about  
13 these rules?

14 A. He had them written down on a piece of  
15 paper. He wanted me to pass them around and let  
16 everybody know the rules.

17 Q. Did Mr. Baca give you that piece of paper?

18 A. Yes.

19 Q. How did he do that?

20 A. He gave it to me so I could write it down.

21 Q. Where did you take that paper?

22 A. To my cell.

23 Q. Did you write it down?

24 A. Yes.

25 Q. Where did you write it down?

1           A.     I wrote it down on a piece of paper in my  
2 cell, returned it to him, and I had my own copy.

3           Q.     And now I want to talk to you about some  
4 of these rules that you learned specifically from  
5 this piece of paper that you received from Mr. Baca.

6           MS. JACKS: And again, Your Honor, this is  
7 limited to Mr. Baca?

8           THE COURT: It is.

9           MS. JACKS: I'll stop bringing that up.

10          THE COURT: Same instruction.

11 BY MR. BECK:

12          Q.     What were the rules that Mr. Baca put in  
13 place in 2008?

14          A.     There was various ones. There was one  
15 that pertained to anybody that is a snitch is to be  
16 murdered. Anybody that does not want to carry out a  
17 hit is to be murdered. There's -- we have to be  
18 working out, exercise every day, and be ready to  
19 fight or go to war with anybody.

20          Q.     Was there a rule about people who had not  
21 yet --

22          MR. LOWRY: Objection, Your Honor.  
23 Leading the witness.

24          THE COURT: Overruled.

25

1 BY MR. BECK:

2 Q. Was there a rule about people who had not  
3 yet, as you say, earned your bones?

4 A. Yes. They have to be prepared to do so.

5 Q. Any other rules you can think of?

6 A. No.

7 Q. Were there -- did this list of rules  
8 include consequences for violating those rules?

9 A. Yes.

10 Q. What were some of those consequences?

11 A. Anything from being murdered to being  
12 assaulted.

13 Q. And how did you know which consequences  
14 would be doled out?

15 A. The rules were set to where the first  
16 rules carry the highest consequences, then on down,  
17 it was lesser.

18 Q. Thank you.

19 I want to talk to you about -- I want to  
20 move away from Mr. Baca's statements and now talk to  
21 you about when you were in the green pod at the  
22 Southern New Mexico facility in July or August of  
23 2013. Were you the leader of the pod at that time?

24 A. Yes.

25 Q. Did you learn -- did you see paperwork

1 come down on Mr. Molina?

2 A. I did.

3 Q. As an SNM member in that pod, what should  
4 you do with -- what did this paperwork entail? Let  
5 me ask that first.

6 A. It was him making a statement to the  
7 police.

8 Q. I think you talked earlier about  
9 snitching.

10 A. Yeah.

11 Q. Is that what you consider this paperwork?

12 A. Yes.

13 Q. As an SNM pod leader, what should happen  
14 when you receive that paperwork?

15 A. I'm supposed to verify where it came from,  
16 supposed to verify that it's legit, and make sure  
17 that a hit is carried out.

18 Q. And who gave you that paperwork?

19 A. Jesse Sedillo.

20 Q. And don't tell me where, but did he tell  
21 you where that paperwork came from?

22 A. Yes.

23 Q. And what did you do with that paperwork?

24 A. I told him I didn't want anything to do  
25 with it. I told him if he wanted to, just throw it

1 away or...

2 Q. Why did you tell him that?

3 A. Because at that point I was already done  
4 with SNM. I didn't want anything to do with it.

5 Q. Why were you done with the SNM?

6 A. I didn't agree with Pup's politics.

7 Q. What do you mean?

8 A. His politics were self-serving. He had no  
9 loyalty to others.

10 Q. Why do you say that?

11 A. Because he would -- he would make enemies  
12 of his own people.

13 MS. DUNCAN: I object.

14 THE COURT: Only need one attorney. Mr.  
15 Lowry?

16 MR. LOWRY: Your Honor, this is hearsay  
17 and speculation, it sounds like.

18 THE COURT: Why don't you tie it down  
19 exactly where he's getting this information before I  
20 allow it?

21 BY MR. BECK:

22 Q. Are these your personal thoughts of why  
23 you didn't agree with Pup's leadership?

24 A. These are my personal thoughts and  
25 feelings, yes.

1 Q. And I think you said you thought that he  
2 was self-serving?

3 A. Yes.

4 MR. LOWRY: Objection, Your Honor. This  
5 is 608.

6 THE COURT: Overruled.

7 BY MR. BECK:

8 Q. Had Mr. Baca ever, in your eyes, violated  
9 the SNM rules?

10 A. Yes.

11 Q. What does "PC" mean?

12 A. Protective custody, requesting protective  
13 custody.

14 Q. And what happens -- what are the SNM rules  
15 generally about someone going to protective custody?

16 A. It's not allowed. Somebody that does that  
17 generally will get stabbed or killed.

18 Q. And have people -- have SNM members gotten  
19 a pass on that?

20 A. Yes.

21 Q. Did you ever confront Mr. Baca about your  
22 issues with him?

23 A. Yes.

24 Q. And what did Mr. Baca say to you when you  
25 confronted him?

1           A.     He accused me of wanting his position.   He  
2 threatened me with violence.

3           Q.     All right.   Moving away from what he  
4 said --

5                   MS. JACKS:   Again, Your Honor, would that  
6 be limited?

7                   THE COURT:   Yes.   So these statements that  
8 Mr. Rubio is testifying that Mr. Baca made can only  
9 be used in regard to Mr. Baca and not the other  
10 three gentlemen.

11                   Mr. Beck.

12 BY MR. BECK:

13           Q.     Did you want Mr. Baca's position?

14           A.     No.

15           Q.     Were you already done with the gang at  
16 that point?

17           A.     Yes.

18           Q.     I want to talk to you a little bit about  
19 March of 2014.   Was Juan Mendez one of the pod  
20 leaders?   Let me ask that a different way.   Who are  
21 the pod leaders of the SNM pods at the Southern  
22 facility?   Let's start with the blue pod.   Who was  
23 the leader of the SNM blue pod at that point?

24           A.     Daniel Sanchez.

25           Q.     Is Daniel Sanchez here in this room?



1 A. Yes.

2 Q. Where is he?

3 A. Right there.

4 Q. In the front room (sic) right here?

5 MR. BECK: Let the record reflect he  
6 pointed to the defendant Daniel Sanchez.

7 THE COURT: The record will so reflect.

8 BY MR. BECK:

9 Q. Who were the leaders in the yellow pod at  
10 that time?

11 A. Juan Mendez, Alex Munoz, and Carlos  
12 Herrera.

13 Q. Is Carlos Herrera in this room?

14 A. Yes.

15 Q. Where is he? Back here behind me?

16 A. Yes.

17 Q. This counsel table in the back?

18 A. Yes.

19 MR. BECK: Let the record reflect he  
20 pointed to the defendant Carlos Herrera.

21 THE COURT: The record will so reflect.

22 BY MR. BECK:

23 Q. Who were the leaders in the green pod at  
24 this point?

25 A. Me and Jesse Sedillo.

1 Q. When paperwork comes down, I think you  
2 talked about a hit needing to be verified?

3 A. Yes.

4 Q. Is that true for -- if you're going to  
5 murder a snitch?

6 A. Yes, it is.

7 Q. Who needs to verify the paperwork before a  
8 snitch is murdered at Southern New Mexico  
9 Correctional Facility in March of 2014?

10 A. The leaders in those pods.

11 Q. Is that the six leaders you just told me  
12 about?

13 A. Yes.

14 Q. If the paperwork comes down and one of  
15 those leaders doesn't verify the paperwork -- or let  
16 me ask this next question before I get there. Do  
17 you actually have to verify the paperwork or do you  
18 have to verify the hit?

19 A. You have to verify both. I have to verify  
20 the hit. I have to verify who sent it, how it got  
21 to me, and verify that the paperwork is legit.

22 Q. Now, after March of 2014, you were put on  
23 lockdown status; is that right? And by "you," I  
24 mean the SNM. Sorry.

25 A. Yes.

1 Q. At some point -- when you were on lockdown  
2 with the SNM, could you have rec time?

3 A. Yes.

4 Q. How often did you have rec time?

5 A. Every day, Monday through Friday,  
6 individual rec cages.

7 Q. What are the individual rec cages?

8 A. Just --

9 Q. Let me ask a better question than that.  
10 You're talking about recreation.

11 THE COURT: Let me ask you this. Could we  
12 maybe do this after the break? We've been going for  
13 a while.

14 MR. BECK: Yes, Your Honor.

15 THE COURT: Let's be in recess for about  
16 15 minutes. Did yesterday's pace and schedule work  
17 for everybody? Everybody is sort of nodding. It  
18 makes for a little shorter afternoon. So we're  
19 going to be on that sort of schedule today and see  
20 how it works. All rise.

21 (The jury left the courtroom.)

22 THE COURT: Y'all are covering up your  
23 screen every time you come up here?

24 MR. CASTELLANO: The last time we put it  
25 down. We are conscious of that now, Your Honor.

1 THE COURT: One thing on the jury  
2 instruction, just be thinking of this. If you're  
3 going to use the -- if we're going to use the drug  
4 dealers or drug users who are less credible, we're  
5 getting quite a group of witnesses here that they're  
6 going to have some drugs. A, I'd like kind of know  
7 probably from the defendants: Do y'all want that  
8 instruction? And then B, y'all got to start giving  
9 me a list of people who will be on that. Right at  
10 the moment I'm not inclined to think these  
11 co-conspirators --

12 MR. BECK: I'm not eliciting that  
13 testimony, Your Honor. I agree.

14 THE COURT: There is one statement. I  
15 don't know if it's worth anything to you, but that  
16 one where --

17 MR. BECK: Your Honor, I don't know if  
18 you're about to talk about Mr. Rubio's statement, if  
19 maybe he should -- maybe he shouldn't be here for  
20 this.

21 THE COURT: Okay.

22 MR. LOWRY: I would agree with that, Your  
23 Honor.

24 THE COURT: All right. Okay. If you'll  
25 just take him out, then.

1 (Mr. Rubio left the courtroom).

2 THE COURT: This is from the November 27  
3 transcript. I guess it's page 151, filed 12/06/17,  
4 docket 1545. I think you listed it in your order, I  
5 guess, when -- if I remember how it was set up, I  
6 guess Rubio was looking at the paperwork and he  
7 goes, "Damn, this is it." It's just two sentences  
8 in this report. I think that might be -- that might  
9 be a present sense impression. So if that helps you  
10 and you want it, I think that one might come in  
11 without a co-conspirator.

12 All right. We'll be in recess for about  
13 15 minutes, then.

14 (The Court stood in recess.)

15 THE COURT: All right. We'll go on the  
16 record. Ms. Jacks?

17 MS. JACKS: Your Honor, I had a  
18 conversation with Mr. Beck. I read Tennessee versus  
19 Street. I'm aware of that case. What I was asking  
20 Mr. Beck is if -- and I want to ask the Court -- if  
21 we could take a few minutes and let me at least make  
22 my argument to the Court before these statements  
23 start flying in. I think we're maybe not  
24 understanding each other. I feel like I have a  
25 decent point, and I'd just like an opportunity to

1 have you think about it.

2 THE COURT: Go ahead.

3 MS. JACKS: The witness here --

4 THE COURT: I've got a jam between the  
5 jurors coming in and there. So go ahead and make  
6 the point.

7 MS. JACKS: Let me see if I can cut to the  
8 chase. We're making an objection based on the Fifth  
9 Amendment due process clause and the Sixth Amendment  
10 confrontation clause regarding the admission of what  
11 the Court is calling admissions of co-defendants  
12 Perez and Herrera at the joint trial. Okay?

13 So my point is very simply this. To the  
14 extent that a co-defendant says something happened  
15 and that's inadmissible evidence against Mr.  
16 Sanchez, that's also evidence that can be used by  
17 the jury -- well, shouldn't be used by the jury, but  
18 will be used by the jury to corroborate the  
19 informant testimony against Mr. Sanchez.

20 The whole issue of the case as to Mr.  
21 Sanchez is whether the informants are credible. So  
22 anytime a co-defendant makes a statement, whether or  
23 not it inculcates Mr. Sanchez by the content of the  
24 statement, it's evidence that the jury is going to  
25 have a very hard time not considering in evaluating

1 the credibility of the informant.

2 And I think much like the situation in  
3 Jackson versus Denno, what's happening is  
4 Mr. Sanchez is going to be tried, the credibility of  
5 the Government's evidence against him is going to be  
6 evaluated based on evidence that's inadmissible  
7 against Mr. Sanchez.

8 And the problem with the limiting  
9 instruction is, we've got the same jury considering  
10 whether any of these defendants are guilty or not  
11 guilty. But they're evaluating the credibility of  
12 the same informants against all four defendants.

13 So I don't understand how a juror -- I  
14 mean, a juror is not a computer. I don't understand  
15 how a juror is supposed to consider Mr. Perez'  
16 statements when evaluating the credibility of  
17 informants testifying against Mr. Perez, but cannot  
18 consider Mr. Perez' statements when evaluating the  
19 credibility of the informants, the same informants  
20 that are testifying against Mr. Sanchez.

21 And I think -- and I go back to my point  
22 that Bruton, I believe, stands on two constitutional  
23 legs: The Fifth and the Sixth Amendments. But  
24 Jackson versus Denno very clearly stands on the  
25 Fifth Amendment, and that law has not been

1 undermined. That holding has not been undermined at  
2 all by the Supreme Court's decision in Crawford.

3 THE COURT: All right. You'll get my  
4 opinion soon on this issue. I do think Richardson  
5 versus Marsh answers your question. You got to make  
6 your point.

7 All rise.

8 (The jury entered the courtroom.)

9 THE COURT: All right. Everyone be  
10 seated.

11 All right, Mr. Rubio, I'll remind you that  
12 you're still under oath.

13 THE WITNESS: Yes.

14 THE COURT: Mr. Beck, if you wish to  
15 continue your direct examination of Mr. Rubio, you  
16 may do so at this time.

17 BY MR. BECK:

18 Q. Mr. Rubio, I was looking over my notes  
19 during the break. We talked about when you had sex  
20 with your wife in the PNM; right?

21 A. Yes.

22 Q. That was against the regulations?

23 A. Yes.

24 Q. Did you know that was against the  
25 regulations?



1 A. Yes.

2 Q. Your wife wasn't the only person in the  
3 room, was she?

4 A. My granddaughter.

5 Q. How old is your granddaughter?

6 A. She was one year old at the time.

7 Q. I want to get back to the cages. We were  
8 talking about the rec yard. So when you're on  
9 lockdown, are you allowed to just go into the rec  
10 yard, open and free?

11 A. No. You're escorted out there,  
12 handcuffed, one at a time.

13 Q. And when you're escorted out there in  
14 handcuffs, where do the correction officers put you?

15 A. Everybody -- just as you go out, they put  
16 you in order in the cages.

17 Q. Okay. And the cages. That's what I want  
18 to talk about. Can you describe how big the cages  
19 are?

20 A. Maybe -- they're not very big. They're  
21 probably ten feet by ten feet.

22 Q. That's ten feet wide, ten feet long, and  
23 how high?

24 A. Maybe 15, 20 feet.

25 Q. And are they made out of metal?

1 A. Yes.

2 Q. How many inmates are in each cage?

3 A. One in each cage.

4 Q. And when you're on lockdown status, that's  
5 how you have your rec time? Am I understanding that  
6 correctly?

7 A. Yes.

8 Q. After the Molina murder, were you put in a  
9 rec cage next to the defendant, Mr. Herrera?

10 A. Yes, I was.

11 Q. Did you and he talk about the Molina  
12 murder? Did he tell you -- I mean, in your words --  
13 this is your words --

14 MR. MAYNARD: Objection, leading, Your  
15 Honor.

16 MR. LOWRY: And objection, hearsay.

17 THE COURT: Well, I'll overrule the  
18 objection on leading.

19 MR. BECK: Your Honor?

20 THE COURT: Sorry, whose statement is  
21 going to be solicited?

22 MR. BECK: Mr. Herrera's, and I think I  
23 may lead during this point just --

24 THE COURT: All right.

25 MR. BECK: And I'll ask the Court's leave

1 to do so.

2 THE COURT: I'm going to allow a little  
3 leeway to the Government on that.

4 And these statements can only be used  
5 against Mr. Herrera, not against the other three  
6 defendants. So if you're taking notes, you might  
7 want to indicate that. But these statements can  
8 only be used against Mr. Herrera.

9 BY MR. BECK:

10 Q. Did Mr. Herrera tell you that he called  
11 the Molina murder?

12 A. Yes, he did.

13 MR. BECK: May I have a moment, Your  
14 Honor?

15 THE COURT: You may.

16 MR. BECK: Pass the witness, Your Honor.

17 THE COURT: Thank you, Mr. Beck.

18 All right. Who would like to go first on  
19 cross-examination? Mr. Maynard, are you going to go  
20 first?

21 MR. MAYNARD: Thank you, Your Honor.

22 THE COURT: Mr. Maynard.

23 CROSS-EXAMINATION

24 BY MR. MAYNARD:

25 Q. Mr. Rubio, on direct examination, you

1 mentioned and described briefly some hits that you  
2 participated in.

3 A. Yes.

4 Q. And you described sort of your description  
5 of a hierarchy or a structure of SNM.

6 A. Yes.

7 MR. BECK: Your Honor, now that I'm in the  
8 back, I realize I'm having a difficult time hearing  
9 Mr. Rubio. So maybe if you can pull that microphone  
10 closer.

11 THE COURT: Y'all will have to help him  
12 there. There we go. Is that better, Mr. Beck?

13 MR. BECK: Yes, Your Honor, thank you.

14 THE COURT: Mr. Maynard.

15 BY MR. MAYNARD:

16 Q. Isn't it frequently a fact that inmates in  
17 prisons have their own personal disagreements and  
18 disputes?

19 A. Yes, they do.

20 Q. And they have their grudges and their  
21 arguments with each other over things?

22 A. Yes.

23 Q. Because the living conditions are not very  
24 pleasant, among other things?

25 A. Yes.

1 Q. And so things can happen where there is  
2 always a question or a risk of arguments and fights,  
3 a disagreement escalating into a fight?

4 A. Yes.

5 Q. And there is always a chance that a fight  
6 will happen for personal reasons, which is  
7 supposedly against SNM rules, if it's between  
8 members?

9 A. Yes.

10 Q. So the person who engages in the assault  
11 or the hit or whatever would want to disguise it as  
12 an SNM hit. That happened?

13 A. I suppose so.

14 Q. You've seen it happen?

15 A. Yes.

16 Q. Now, you talked about verification.  
17 The -- let me step back and ask you this question.  
18 What's the difference between a llavero and a  
19 shot-caller, if you know?

20 A. There is no difference.

21 Q. Okay. So what do they represent, if there  
22 is no difference?

23 A. They're just two different ways of wording  
24 it. But it's just somebody who's in a position to  
25 make decisions.

1 Q. All right. Now, you mentioned decisions  
2 are made in different pods and at different levels.

3 A. Yes.

4 Q. You were in the position to make decisions  
5 in your pod.

6 A. Yes.

7 Q. Yours was the green one?

8 A. Yes.

9 Q. Now, the murder of Mr. Molina occurred in  
10 a different pod, the blue pod?

11 A. Yes.

12 Q. And even farther away from your pod was  
13 the yellow pod?

14 A. It was right next door.

15 Q. Oh, next door. Okay. So you could never  
16 see what was going on in the Blue or the yellow  
17 pods?

18 A. No.

19 Q. So you'd have to rely on rumors to hear  
20 about what was happening or to communicate --

21 A. That's why there are people put in place  
22 to make those decisions.

23 Q. Right. And the communication is by rumor.  
24 Well, by word-of-mouth.

25 A. Yeah, between those people.

1 Q. All right. Now, when you were describing  
2 people who had positions of influence in the yellow  
3 pod, you didn't mention a man by the name of Alex  
4 Munoz?

5 A. Yes.

6 Q. Was he?

7 A. Yes.

8 Q. And so that means three people in the same  
9 pod?

10 A. Yeah. People weren't voted on depending  
11 on where you lived. It just -- people voted for a  
12 certain amount of people to be a leader. It didn't  
13 matter where you live.

14 Q. And then they can unvote them?

15 A. Yes.

16 Q. All right. But the procedures for that  
17 are not very clearly laid out.

18 A. No.

19 Q. Okay. Now, in terms of this  
20 investigation, when were you first asked questions  
21 by any law enforcement officer about what happened  
22 the day or the days before and after the Molina  
23 murder?

24 A. Maybe within a couple of days of that.

25 Q. And in fact, later on in March of 2014,

1 this very same month that this happened, you were  
2 questioned by authorities, state authorities?

3 A. Yes.

4 Q. And you basically said you were in the  
5 shower and you knew nothing?

6 A. Yes. I don't know if I said I was in the  
7 shower, but I said I knew nothing.

8 Q. Right. Later on -- and correct me if you  
9 think I'm wrong -- in December of 2016 or at some  
10 other date federal authorities came to talk to you  
11 when you were in state custody. Do you remember  
12 that conversation?

13 A. Yes.

14 Q. And in fact -- by the way, how many times  
15 have you been questioned by federal authorities in  
16 preparation for your cooperation today?

17 A. I'm not sure.

18 Q. Do you have a count of it?

19 A. No.

20 Q. Could you hazard an estimate of how many  
21 times?

22 A. Maybe --

23 Q. Two or three times? Four or five times?

24 A. Maybe two or three times.

25 Q. That's it?



1 A. Yes.

2 Q. So over a year ago, they approached you  
3 and asked you for your cooperation.

4 A. Yes.

5 Q. And now at that particular time they were  
6 asking you for cooperation with respect to the  
7 Molina murder, the Molina investigation; correct?

8 A. Yes.

9 Q. And you asked them for some benefit in  
10 return if they could?

11 A. Yes.

12 Q. And one of the benefits you requested was  
13 assistance in getting your state sentence lowered.

14 A. No.

15 Q. No?

16 A. No.

17 Q. Assistance in getting, perhaps, permission  
18 to parole out sooner?

19 A. Not permission. Just to give a statement  
20 and let them know that I cooperated with them at my  
21 parole hearing.

22 Q. Oh. So your expectation was they couldn't  
23 change your state sentence, but could perhaps  
24 persuade the parole board to release you earlier.

25 A. Not to release me earlier. Just release

1 me on the day that I go before the parole board.

2 Q. And when were you expecting to go before  
3 the board?

4 A. 2024.

5 Q. And you're hoping that date might be moved  
6 up?

7 A. No. I'm expecting to go on the same day.

8 Q. So it will be 30 straight?

9 A. Yes.

10 Q. They don't have to release you on that  
11 date, but you're hoping they will?

12 A. Yes.

13 Q. Now, did the authorities for the FBI talk  
14 to you about your exposure to possible federal  
15 prosecution?

16 A. No.

17 Q. Did they indicate to you that if you were  
18 cooperative, the Government would not have a  
19 pressing interest in prosecuting you for any federal  
20 RICO violations?

21 A. No, they told me I wasn't a target.

22 Q. You weren't a target?

23 A. No.

24 Q. All right. So if there is a memo written  
25 by Ms. Armijo relating to your statements and their

1 investigation indicating that the Government  
2 indicated if you cooperated, they would have no  
3 pressing interest in prosecuting you, that wouldn't  
4 be correct?

5 A. Well, I was told that I wouldn't be  
6 getting prosecuted; I wouldn't be targeted.

7 Q. Okay. Now, that particular day when you  
8 first agreed to cooperate, you didn't say anything  
9 in response to questions. You didn't even mention  
10 Carlos Herrera's name, did you?

11 A. I don't remember if I mentioned it that  
12 day.

13 Q. So if the reports of the investigators  
14 indicate you said nothing about Carlos Herrera, you  
15 don't have any dispute with that?

16 A. No, I did mention him. I just don't know  
17 if I mentioned him that day.

18 Q. Okay. So maybe later on.

19 A. Yes.

20 Q. Okay. Then later on, you had additional  
21 privileges, family visitation?

22 A. Yes.

23 Q. And of course, during one of those  
24 incidents of family visitation is when it occurred  
25 that you had oral sex with your wife?

1 A. Yes.

2 Q. In the same room with your infant  
3 granddaughter.

4 A. Yes.

5 Q. And that resulted in a sanction and you  
6 were at risk for losing quite a bit of good time.

7 A. Yes, I lost all of it.

8 Q. Now, you got tier-time privileges, in  
9 addition, over and above what other inmates might  
10 get; correct?

11 A. Yes.

12 Q. And you got extra telephone privileges?

13 A. Yes.

14 Q. All right. And later on, you gave  
15 additional statements.

16 A. Yes.

17 Q. And for instance, with respect to the  
18 incident after -- well, let me step back and ask it  
19 this way. Were you put in custody with other people  
20 who were also contemplating cooperating with the  
21 federal investigation?

22 A. Briefly I was, for about two weeks.

23 Q. About two weeks? And that's when you were  
24 taken out because of the visitation violation?

25 A. No, I was waiting to be sent to another

1 facility, which is people who are renouncing being  
2 gang members.

3 Q. All right. Now, by the way, you don't  
4 consider you're a gang member anymore.

5 A. I'm in the process of renouncing.

6 Q. You indicated that hits can involve  
7 murders, but they can also involve just assaults?

8 A. Yes.

9 Q. And in fact, to a certain extent, they can  
10 involve just extortions.

11 A. Yeah, there's extortions that happen, but  
12 it's not considered a hit, I mean.

13 Q. In fact, you haven't been prosecuted in  
14 connection with any activities involving SNM, have  
15 you?

16 A. Yes, I have.

17 Q. Federally, I mean?

18 A. Federally, no.

19 Q. Okay. And you don't expect to be?

20 A. No.

21 Q. Although you indicated you participated in  
22 such activities for which that might be possible.

23 A. Yeah.

24 Q. All right.

25 MR. MAYNARD: May I have a moment, Your

1 Honor?

2 THE COURT: You may.

3 MR. MAYNARD: No further questions.

4 THE COURT: Thank you, Mr. Maynard.

5 Mr. Lowry, do you have cross-examination  
6 of Mr. Rubio?

7 MR. LOWRY: May we have a moment?

8 THE COURT: You may.

9 Do you want to go next, Mr. Jewkes? Is  
10 this all right with you, Mr. Lowry, if Mr. Jewkes  
11 goes?

12 MR. LOWRY: Yes, Your Honor.

13 THE COURT: Mr. Jewkes.

14 CROSS-EXAMINATION

15 BY MR. JEWKES:

16 Q. It's afternoon now. Good afternoon, Mr.  
17 Rubio.

18 A. Good afternoon.

19 Q. Mr. Rubio, in response to questioning from  
20 the prosecutor Mr. Beck, you indicated that your  
21 first conviction was a murder conviction; is that  
22 correct?

23 A. Yes.

24 Q. Where was that conviction obtained? In  
25 what county?

1 A. Chaves County.

2 Q. Chaves County? Carlsbad.

3 A. Roswell.

4 Q. Roswell. Excuse me. Okay. And you told  
5 us that that was a murder sentence for conduct  
6 during a burglary.

7 A. Yes.

8 Q. What? A homeowner died? What was that  
9 about?

10 A. Yes.

11 Q. Yes?

12 A. Homeowner died, yes.

13 Q. How was that homeowner killed?

14 A. With a tire iron.

15 Q. Okay. So it was a home invasion?

16 A. Yes.

17 Q. Yes?

18 A. Yes.

19 Q. That went bad?

20 A. Yes.

21 Q. And the homeowner was killed with a tire  
22 iron?

23 A. Yes.

24 Q. And was that a male homeowner or a female  
25 homeowner?

1 A. Female.

2 Q. You received a lengthy sentence for that,  
3 I take it?

4 A. Yes.

5 Q. Life?

6 A. Life.

7 Q. And Mr. Rubio, have you obtained any other  
8 felony convictions in this state, any other state,  
9 or in any federal jurisdiction?

10 A. No.

11 Q. That's it?

12 A. I have one conviction for -- in the state  
13 for tampering with evidence, and that's it.

14 Q. Okay. Now, that tampering with  
15 evidence -- was that in connection with the  
16 investigation in this case?

17 A. No.

18 Q. Another case?

19 A. Another case.

20 Q. Would that have been a homicide case?

21 A. No. It was assault with a weapon.

22 Q. Okay, sir. Out of what jurisdiction?

23 What county?

24 A. It was in Santa Fe.

25 Q. Santa Fe. All right, Mr. Rubio. You



1 explained to Mr. Beck about, to some extent, these  
2 homemade weapons, shanks. You're familiar with what  
3 a shank is. It's for all practical purposes a  
4 homemade knife.

5 A. Yes.

6 Q. What are they made of?

7 A. Various wood, plastic, metal, sometimes  
8 razor blades.

9 Q. But generally you prefer steel; right?

10 A. Yes.

11 Q. Because of its strength?

12 A. Yes.

13 Q. How do you make a shank?

14 A. There's different ways to obtain the  
15 material, different ways to sharpen it. Usually  
16 like on the concrete.

17 Q. Concrete?

18 A. Yes.

19 Q. So take some piece of steel, whatever  
20 configuration it might be, whatever it might be, and  
21 then you go to work on it on the concrete?

22 A. Yes.

23 Q. What kind of concrete? Sidewalk? Will  
24 that do it, or do you need --

25 A. The entire prison is made of concrete.

1 Q. Okay. It's kind of slow, laborious work,  
2 isn't it?

3 A. Not if you know what you're doing.

4 Q. How fast can you make a shank, Mr. Rubio?

5 A. Within hours.

6 Q. Hours, plural?

7 A. Yes.

8 Q. Say, like, more than two hours, three  
9 hours?

10 A. I could make one within an hour.

11 Q. And you just run it back and forth over  
12 the concrete?

13 A. Yes.

14 Q. You grind it, basically; is that correct?

15 A. Yes.

16 Q. And you can make a shank in, say, two  
17 hours?

18 A. Yes.

19 Q. Where do you keep these shanks? By that I  
20 mean, how do you keep guards from finding shanks?

21 A. Different places in the prison that you  
22 can hide them. Out in the yard, in the recreation  
23 yard. There's places where there are common areas.  
24 Sometimes in cells.

25 Q. Are shanks readily available in the prison

1 system?

2 A. Yes.

3 Q. Why?

4 A. Because it's a place where -- I mean, it's  
5 a violent mentality.

6 Q. A lot of violence?

7 A. Yes.

8 Q. Some political beefs and a lot of personal  
9 beefs; yes?

10 A. Yes.

11 Q. If someone steals -- another inmate steals  
12 your commissary, he's going to have to answer to  
13 you, isn't he?

14 A. Yeah.

15 Q. Yes?

16 A. Yes.

17 Q. And you can have personal beefs over  
18 women?

19 A. Yes.

20 Q. Or a possession as simple as a watch or a  
21 book?

22 A. Yes.

23 Q. It does happen, does it not, Mr. Rubio?

24 A. Yes, it happens.

25 Q. It's not all political; it's not all gang

1 politics, is it?

2 A. It varies.

3 Q. You told Mr. Beck that you stabbed an  
4 enemy of SNM.

5 A. Yes.

6 Q. That's how you earned your bones.

7 A. Yes.

8 Q. That was in 1997.

9 A. Yes.

10 Q. Did that kill him, or just take him out of  
11 the game?

12 A. It wounded him. It didn't kill him.

13 Q. I'm sorry?

14 A. I wounded him, but I didn't kill him.

15 Q. Okay. He survived?

16 A. Yes.

17 Q. You picked up some more time for that;  
18 correct?

19 A. Yes.

20 Q. By the way, what is your scheduled parole  
21 date?

22 A. My first parole hearing is in March of  
23 2024.

24 Q. 2024?

25 A. Yes.

1 Q. So you've got at least another six years  
2 before you can be considered?

3 A. Yes.

4 Q. And you wanted the Government to kind of  
5 come to your assistance, help you. This Government.

6 A. Just to, yeah, to testify on my behalf.

7 Q. Put in a good word for you.

8 A. Yes.

9 Q. Who do you want to do that? Which one?  
10 Who do you want to --

11 A. The federal government.

12 Q. Which member of the federal government?

13 A. Anyone.

14 Q. Special Agent Acee?

15 A. Yes.

16 Q. What about these prosecutors here? Any  
17 one of them? Do you want them to come to your aid,  
18 say nice things about you?

19 A. Not say nice things about me. Just say  
20 what I spoke.

21 Q. Okay. Well, when did you make the  
22 decision to cooperate in this case? About how long  
23 ago?

24 A. About a couple years ago.

25 Q. Two years ago?

1 A. Maybe, yeah.

2 Q. Not long after the indictments came down?

3 A. It was about a year after that, I think.

4 Q. Because we're talking about December 2015  
5 when the indictment came down.

6 A. Yeah.

7 Q. So it would have been about a year after  
8 that?

9 A. Yes.

10 Q. Did you know the people that were  
11 indicted?

12 A. Yes.

13 Q. After they were indicted, did you have any  
14 conversations with any of those people?

15 A. No.

16 Q. None?

17 A. I wasn't in the same facility as them at  
18 that time.

19 Q. What about later? Were you transferred to  
20 other facilities?

21 A. Yeah, I was transferred to other  
22 facilities, but I was never with them.

23 Q. Not one of the defendants?

24 A. Not one.

25 Q. Have you had an opportunity to look at any

1 of the discovery in this case?

2 A. No.

3 Q. Now, when we use the word "discovery," do  
4 you understand what that means?

5 A. Yes, I said.

6 Q. I'm sure you do.

7 A. Yes, I do.

8 Q. Would you explain to the jury what  
9 discovery is, in your own words?

10 A. In my own words, it's the evidence  
11 presented in the case.

12 Q. Sure. We're talking about FBI  
13 investigative reports, yes?

14 A. Yes.

15 Q. Witness statements?

16 A. Yes.

17 Q. Reports of interviews of witnesses?

18 A. Yes.

19 Q. Lab reports? That sort of thing. That  
20 would all be the discovery?

21 A. Okay. Yes.

22 Q. Mr. Rubio, have you had the opportunity to  
23 look at any of the discovery in this case?

24 A. No.

25 Q. You hesitated just a little with me, and

1 that's fine. I'm assuming you're thinking and  
2 making sure you remember everything.

3 A. Yes.

4 Q. But are you sure you haven't seen any of  
5 the discovery in this case?

6 A. No, I haven't.

7 Q. You were interviewed by an FBI agent, a  
8 female agent, by the name of Nancy Stemo. Do you  
9 know that agent?

10 A. Yes.

11 Q. And that would have been recently, within  
12 the last few days?

13 A. Yes.

14 Q. Do you remember that interview?

15 A. Within the last few days?

16 Q. Yes, sir.

17 A. No.

18 Q. Did you meet with Agent Stemo on January  
19 24, 2018?

20 A. No.

21 Q. No. When was the last time you met with  
22 Agent Stemo?

23 A. I don't know.

24 MR. JEWKES: May I approach the  
25 Government, Your Honor?



1 THE COURT: You may.

2 BY MR. JEWKES:

3 Q. Okay, Mr. Rubio, we're talking about  
4 January 29. I'm sorry, January 24. Did you have a  
5 meeting with Agent Stemo?

6 A. I don't know who that is.

7 MR. JEWKES: May I approach the witness,  
8 Your Honor?

9 THE COURT: You may.

10 A. 2018? I guess I don't know the name of  
11 the agent.

12 BY MR. JEWKES:

13 Q. Have you refreshed your memory?

14 A. Yes.

15 Q. All right, Mr. Rubio, going back to this  
16 interview that you had with a female FBI agent --

17 A. Yes.

18 Q. -- did you tell that agent -- provide some  
19 information about some paperwork in regard to the  
20 Javier Molina homicide?

21 A. Yes.

22 Q. You claim now that there was some kind of  
23 paperwork?

24 MR. MAYNARD: I have to object. I'm not  
25 sure if this is on personal knowledge.

1 MR. JEWKES: I'll clarify.

2 THE COURT: Go ahead.

3 BY MR. JEWKES:

4 Q. Mr. Rubio, did you actually see any type  
5 of paperwork?

6 A. I seen some of it. I don't know if it was  
7 legitimate paperwork, but I seen some, yes.

8 Q. Okay. You seem to have a question in your  
9 mind as to whether or not it was legitimate.

10 A. Yes.

11 Q. Why do you say that?

12 A. Because it was provided by another inmate.

13 Q. Who was the inmate that provided it?

14 MS. DUNCAN: Your Honor, I'm going to  
15 object.

16 (Inaudible.)

17 THE COURT: We need one. We're getting a  
18 couple of lawyers objecting, so just one.

19 MR. LOWRY: Your Honor, may we approach?

20 THE COURT: Well, he can ask this  
21 question, just who provided the paperwork to him, if  
22 he saw it.

23 And why don't you specify it that clearly,  
24 Mr. Jewkes, that -- who handed him the paperwork?

25 MR. JEWKES: I will.

1 BY MR. JEWKES:

2 Q. Who handed you the paperwork?

3 A. Ronald Sanchez.

4 Q. Now, this paperwork -- did it have  
5 anything to do with Javier Molina?

6 A. No.

7 Q. No?

8 A. No.

9 Q. Nothing?

10 A. No. The paperwork that had to do with  
11 Javier Molina was handed to me by Jesse Sedillo in  
12 2013.

13 Q. 2013?

14 A. Yes.

15 Q. What did the paperwork look like?

16 A. I briefly read it. It was a statement  
17 made by Javier Molina to the Las Cruces Police  
18 Department.

19 Q. Let me ask you this. First of all, what  
20 size was it? Was it 8-and-a-half-by-11? Smaller  
21 than that?

22 A. I didn't measure it. Looked like a  
23 regular sheet of paper to me.

24 Q. How many sheets of paper?

25 A. I'm not sure. It was a stack of paper,

1 maybe 15, 20 sheets.

2 Q. Fifteen or twenty sheets?

3 A. Yes.

4 Q. All pertaining to the same subject?

5 A. No. It was interviews that they made with  
6 him and other people.

7 Q. Was it typewritten?

8 A. Yes.

9 Q. Did it look like whether or not it was on  
10 the official police report form?

11 A. It looked like it.

12 Q. Did you read it?

13 A. I read some of it. I skimmed through it.

14 Q. Did it have any type of city or state logo  
15 or police logo on it?

16 A. No. It had a case number on it.

17 Q. This was going back years ago; correct?

18 A. Yes.

19 Q. Whatever happened to that paperwork? Do  
20 you know where it is now?

21 A. No. The person who showed it to me  
22 supposedly flushed it down the toilet. I gave it  
23 back to him.

24 Q. Did you read it?

25 A. Yes, I skimmed through it.

1 Q. Mr. Rubio, have you seen any of these  
2 tablets that some of the defendants have?

3 A. No.

4 Q. You have not?

5 A. No.

6 Q. Regarding your parole status, whom with  
7 the Government have you spoken to about your parole?  
8 I'm talking about at this table, over with the FBI.

9 A. Mr. Casey. Mr. Casey. Bryan Casey.

10 Q. Acee?

11 A. Acee.

12 Q. Bryan Acee. Okay. What did you ask  
13 Mr. Acee, Agent Acee, to do for you?

14 A. If he can speak on my behalf on my parole  
15 hearing.

16 Q. And that would be in 2026?

17 A. Yes, sir.

18 Q. You can get a hearing before then, can't  
19 you?

20 A. No, I can't.

21 Q. Because you're doing a life sentence?

22 A. Yes. I have to do 30 years.

23 Q. How much time have you done?

24 A. Twenty-four.

25 Q. Twenty-four. How did you come to earn the

1 special privileges as far as your wife being able to  
2 spend some time with you? That's unusual, is it?

3 A. No. No, it's not. You just earn  
4 privileges through advancing in the level system and  
5 good behavior.

6 Q. Did you get any special privileges once  
7 you agreed approximately a year ago, or however long  
8 ago it was, to become a cooperating witness?

9 A. I was put in a Level 6 facility. I was  
10 removed from a Level 4 facility. I was still given  
11 my Level 4 privileges when I was put in a Level 6  
12 facility.

13 Q. Okay. So once you decided to become a  
14 cooperator and to let these people know you were  
15 going to cooperate, it changed your status. Is that  
16 correct, or did I misunderstand you?

17 A. No, I was in a Level 4 facility during the  
18 time. I was taken to a Level 6 facility because my  
19 life was -- supposedly my life was in danger because  
20 Mr. Baca put a hit on me.

21 MR. LOWRY: Objection, Your Honor. Can we  
22 move to strike?

23 THE COURT: And why?

24 MR. LOWRY: Hearsay.

25 MR. JEWKES: May I respond, Your Honor?

1 THE COURT: Well, if he knows that a hit  
2 was put on him, then I'll allow it. Go ahead.

3 MR. JEWKES: I was going to say it was  
4 also nonresponsive to the question I asked, Your  
5 Honor.

6 THE COURT: Well, it's your question. So  
7 if it's nonresponsive, I'll strike the answer and  
8 the jury will disregard the witness' answer.

9 MR. JEWKES: Thank you, Your Honor.

10 BY MR. JEWKES:

11 Q. All right, Mr. Rubio, what -- you were  
12 voted, according to what you told us, the leader of  
13 the green pod?

14 A. Yes.

15 Q. Okay. And that's at Southern New Mexico;  
16 correct?

17 A. Yes.

18 Q. When did you decide after that that you no  
19 longer wanted to be a leader, wanted to be part of  
20 the group?

21 A. Not long after.

22 Q. You decided to enter the program? You  
23 know which program I'm talking about?

24 A. What program?

25 Q. Where you leave SNM.

1 A. Yeah, but I done that last year.

2 Q. Last year?

3 A. Yes. That program didn't exist at that  
4 time.

5 Q. What's the name of the program? The  
6 R-what? RPP?

7 A. RPP.

8 Q. RPP?

9 A. Yes.

10 Q. I thought the RPP had been around for  
11 quite a few years, Mr. Rubio.

12 A. I wasn't aware of it.

13 Q. You didn't know about it?

14 A. I wasn't aware of it.

15 Q. It could have been in existence, but  
16 you --

17 A. It could have been in existence, but I  
18 wasn't aware of it at that time.

19 MR. JEWKES: May I have a moment, Your  
20 Honor?

21 THE COURT: You may.

22 MR. JEWKES: Pass the witness, Your Honor.

23 THE COURT: Thank you, Mr. Jewkes.

24 Mr. Lowry, do you want to go next?  
25



1 CROSS-EXAMINATION

2 BY MR. LOWRY:

3 Q. Good afternoon, Mr. Rubio. You spoke on  
4 direct about not being happy with Mr. Baca's  
5 leadership when he was at Southern.

6 A. Yes.

7 Q. When you were at Southern, did you know a  
8 gentleman named Jeffrey Madrid?

9 A. Yes.

10 Q. Stoner?

11 A. Yes.

12 Q. And what was the relationship like between  
13 Mr. Madrid and Mr. Stoner? It was antagonistic,  
14 wasn't it?

15 A. Between who?

16 Q. Mr. Baca and Mr. Stoner.

17 A. I'm not sure if they actually got along or  
18 not.

19 Q. In fact, the folks at Southern wanted Mr.  
20 Baca to kill Mr. Stoner because he was  
21 disrespectful; isn't that true?

22 A. Not that I know of.

23 Q. Not that you know of. Were you aware that  
24 the people at Southern kited Mr. Baca out?

25 A. No.

1 Q. You weren't aware of that. You just  
2 weren't happy with Mr. Baca because he didn't follow  
3 the rules?

4 A. Yeah.

5 Q. And he gave passes to people that went to  
6 PC?

7 A. Yes.

8 Q. And that wasn't a good thing, in your  
9 view?

10 A. No.

11 Q. And by giving a pass to somebody that went  
12 to PC, he said he'd overlook that supposed  
13 transgression against the SNM?

14 A. Yes.

15 Q. You talked about the drug use at the  
16 prison. Is it fair to say that you used heroin?

17 A. Yes, I have.

18 Q. How often?

19 A. I've used it. I mean, I was a drug addict  
20 for maybe a couple of years in the '90s where I used  
21 pretty much daily. After that, I kind of stopped  
22 doing drugs.

23 Q. Altogether?

24 A. Yes.

25 Q. Before that, did you use everything you

1 came across?

2 A. Yes.

3 Q. Just to pass the time?

4 A. Yes.

5 Q. Because it's not a glamorous place, is it?

6 A. Right.

7 Q. Prison?

8 A. Yes.

9 Q. You know, speaking of that, can we bring  
10 up Government's Exhibit 13?

11 Mr. Beck was talking about where you  
12 resided. You lived in HU 1 A, that building down  
13 right here; correct?

14 A. Yes.

15 Q. And when you were talking about going to  
16 the rec yard, you were talking about going over to  
17 these cages right here; correct?

18 A. Yes.

19 Q. And you literally had to sit in these  
20 cages like a dog run, like a kennel?

21 A. Yes.

22 Q. And if we could go to Government's Exhibit  
23 162.

24 This is a fair example of the floor plan  
25 of your housing unit, isn't it?

1 A. Yes.

2 Q. And just to be clear, this would be the  
3 blue pod here?

4 A. Yes.

5 Q. And this was the yellow pod?

6 A. Yes.

7 Q. And this would be the green pod where you  
8 lived; correct?

9 A. Yes.

10 Q. And I believe you said that you were a  
11 llavero?

12 A. Yes.

13 Q. For the green pod?

14 A. Yes.

15 Q. And you'd order hits?

16 A. Yes.

17 Q. Why did that trouble you that Mr. Baca  
18 would let people go into protective custody?

19 A. Because he favored certain people. He  
20 favored people who took his side rather than  
21 everybody living by the same rules.

22 Q. So he would let some people just PC out?

23 A. Yeah. I mean, if it benefited him, yes.

24 Q. Now, I want to talk to you about your  
25 relationship with the prosecution in this case. Did

1 you understand, when the FBI came to you, that they  
2 said, "Please cooperate with us and if you  
3 cooperate, we will not charge you"?

4 A. Those weren't the exact words. I was  
5 asked to cooperate.

6 Q. And you were told in exchange for your  
7 cooperation, you wouldn't be prosecuted?

8 A. Yes. Not in exchange, but they just told  
9 me I wasn't going to be prosecuted.

10 Q. Okay. So you just talked to them because  
11 you wanted to?

12 A. Because I wanted out of the SNM.

13 Q. And you wanted out of Southern?

14 A. No, out of the SNM Gang.

15 Q. But you also wanted them to help you  
16 reduce your state sentence?

17 A. Not reduce my sentence.

18 Q. Well, how often do people get paroled in  
19 New Mexico on a murder charge?

20 A. I don't know.

21 Q. And your sentence isn't just the 30 years  
22 for the murder. You got life plus 18 years in your  
23 sentence, didn't you?

24 A. Yes.

25 Q. So even if you got paroled in 2024, as you

1 testified, you'd still have to do the 18-year  
2 sentence?

3 A. Yes.

4 Q. So what benefit does it get you to get  
5 parole granted if you still have 18 years to serve?

6 A. Well, if I parole from my life sentence, I  
7 do my -- I start serving my 18 years.

8 Q. Right. So if you get parole in 2024, you  
9 still have 18 to go.

10 A. Yes.

11 Q. Did you want the United States to help  
12 neutralize that 18 years?

13 A. No.

14 Q. You wanted to do that 18 years.

15 A. Yes. I'm going to do my time, yes.

16 Q. But when you were living in Level 6, you  
17 got the benefits, you got all the calls you wanted?

18 A. Yes.

19 Q. You got contact visits?

20 A. Yes.

21 Q. You got to go to the pizza party?

22 A. Yes.

23 Q. And that was a social engagement?

24 A. Yes.

25 Q. And did you see Special Agent Acee there?

1 A. Yes.

2 Q. Did you get to talk to him at that?

3 A. Yes.

4 Q. How long was he there?

5 A. I'm not sure.

6 Q. Who else was there in terms of the  
7 correctional officials?

8 A. I don't remember.

9 Q. But one of the benefits they gave you at  
10 Level 6 was unmonitored contact visits with your  
11 wife; correct?

12 A. Yes.

13 MR. LOWRY: May we approach, Your Honor,  
14 just briefly?

15 THE COURT: You may.

16 (The following proceedings were held at  
17 the bench.)

18 MR. LOWRY: Your Honor, I was going to  
19 queue up the video, but I don't know how the system  
20 works, and I don't know if we can stipulate to its  
21 admissibility or just play it.

22 MS. ARMIJO: I believe they want to play  
23 the sex video. It's a 22-second clip.

24 MR. LOWRY: It's faded. It's got the  
25 blocked --

1 THE COURT: I think I saw it at the  
2 hearing. It's very -- it's a piece of evidence?

3 MR. LOWRY: Yes, it is, Your Honor.

4 MR. BECK: So it was just handed to me on  
5 a thumb drive, and that's fine.

6 MR. LOWRY: It's blocked out.

7 MR. BECK: I think at this point he's  
8 admitted to sex. He's admitted the granddaughter's  
9 in the room.

10 THE COURT: Well, if you make it a 403,  
11 I'll go ahead and let the defendants play the tape.

12 MR. BECK: So under Rule 403, I think that  
13 the evidentiary value is --

14 THE COURT: I'll let them play it.

15 MS. JACKS: Do you guys want to watch it  
16 first? It's on the thumb drive. It's labeled  
17 "Rubio."

18 MR. BECK: We don't need to see it yet.

19 MR. LOWRY: Can we break and do lunch and  
20 clarify over the lunch hour?

21 THE COURT: I don't think there is  
22 anything to clarify.

23 MR. BECK: I think the Court ruled.

24 (The following proceedings were held in  
25 open court.)



1 THE COURT: Mr. Lowry.

2 MR. LOWRY: Thank you, Your Honor.

3 BY MR. LOWRY:

4 Q. Mr. Rubio, I'm going to show you a little  
5 video clip, and I'm going to ask you if you can  
6 identify it, with the Court's permission.

7 THE COURT: You may.

8 MR. BECK: Your Honor, I'm not sure it was  
9 ever entered into evidence.

10 THE COURT: Do you want to introduce it  
11 into evidence?

12 MR. LOWRY: I am, Your Honor.

13 THE COURT: What's the exhibit number?

14 MR. LOWRY: It is Exhibit Number AM 1.

15 THE COURT: AM 1. I assume this  
16 defendants? All right.

17 MR. LOWRY: We'd move to admit Defendants'  
18 AM 1.

19 THE COURT: AM 1 will be admitted into  
20 evidence.

21 (Defendants' Exhibit AM 1 admitted.)

22 MR. BECK: Your Honor, we object under  
23 Rule 403.

24 THE COURT: I understand. It will be  
25 admitted.

1 BY MR. LOWRY:

2 Q. Can you identify the person in the yellow?

3 A. That's me.

4 Q. And who is that with you?

5 A. My wife.

6 Q. Okay. And where was your granddaughter?

7 A. Sitting down on the chair.

8 Q. That's her foot?

9 A. Yes.

10 Q. Is it normal for inmates at Level 6 to get  
11 unmonitored visits with family members?

12 A. No.

13 MR. LOWRY: No further questions, Your  
14 Honor.

15 THE COURT: All right. Thank you, Mr.  
16 Lowry.

17 Ms. Fox-Young.

18 MS. FOX-YOUNG: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MS. FOX-YOUNG:

21 Q. Good afternoon, Mr. Rubio. In the  
22 beginning of your testimony, I think you said that  
23 Tony Perez brought you into the SNM; is that right?

24 A. Yes.

25 Q. Not Rudy Perez; right?

1 A. Not Rudy.

2 Q. Okay. Thank you. You talked a little bit  
3 about an extensive period of time you spent in  
4 solitary confinement.

5 A. Yes.

6 Q. Can you tell me what that was like?

7 A. Basically I'm in my room 23 hours a day.  
8 I have only my state-issued clothing and my hygiene  
9 items.

10 Q. And how big was the room?

11 A. I'm not sure. Maybe ten feet by eight  
12 feet, maybe.

13 Q. And day-to-day, on a daily basis, did you  
14 see any other people?

15 A. No. I mean, everybody is locked in their  
16 rooms.

17 Q. How did you get food?

18 A. The CO brings it, puts it in through the  
19 food slot.

20 Q. Did you see the CO?

21 A. Yeah.

22 Q. Just through the slot?

23 A. Yeah.

24 Q. And you'd eat in your room?

25 A. Yes.

1 Q. And you didn't otherwise communicate with  
2 anybody?

3 A. You come out to rec by yourself. They put  
4 you in the rec cage by yourself. They take you to  
5 the shower by yourself, and put you back in the  
6 room.

7 Q. Sometimes it's possible to communicate  
8 just with the person who is in a cell next to you;  
9 right? Through the vent?

10 A. Yes.

11 Q. But other than that, you can't communicate  
12 with other inmates?

13 A. No.

14 Q. There are no windows; right?

15 A. There is the window in the front and the  
16 window in the back, but you can't see out the window  
17 in the back. Sunlight comes in, and that's it.

18 Q. You talked a little bit about the  
19 consequences of interfering with a hit; right?

20 A. Yes.

21 Q. And you said that's murder; you'd be  
22 murdered?

23 A. Yes.

24 Q. You know that from personal experience?

25 A. Yes.

1 MS. FOX-YOUNG: No further questions, Your  
2 Honor.

3 THE COURT: Thank you, Ms. Fox-Young.

4 Mr. Beck, do you have redirect?

5 MR. BECK: No, Your Honor. The witness  
6 may be excused.

7 THE COURT: All right.

8 Mr. Rubio, you may step down.

9 Is there any reason that Mr. Rubio could  
10 not be excused from the proceedings, Mr. Beck?

11 MR. BECK: Not from the Government, Your  
12 Honor.

13 THE COURT: Can he be excused?

14 MS. FOX-YOUNG: Yes, Your Honor.

15 THE COURT: Everybody in agreement with  
16 that?

17 MS. JACKS: Your Honor, we'd like to keep  
18 him subject to recall.

19 THE COURT: All right.

20 You'll need to stay outside of the  
21 courtroom, but you're subject to recall. Thank you  
22 for your testimony.

23 All right. Mr. Castellano, does the  
24 Government have its next witness or evidence?

25 MR. CASTELLANO: Yes, Your Honor. The

1 United States calls William Price.

2 THE COURT: Mr. Price, if you'll come up  
3 and stand next to the witness box on my right, your  
4 left, before you're seated, Ms. Standridge, my  
5 courtroom deputy, will swear you in right up here on  
6 my right.

7 I'm going to go ahead and assume this is  
8 all right with everybody. They're going to go ahead  
9 and transport Mr. Rubio.

10 MS. JACKS: That's fine.

11 WILLIAM PRICE,  
12 after having been first duly sworn under oath,  
13 was questioned, and testified as follows:

14 THE CLERK: Please be seated and state and  
15 spell your name for the record.

16 THE WITNESS: William Price. P-R-I-C-E.

17 THE COURT: Mr. Price. Mr. Castellano.

18 MR. CASTELLANO: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MR. CASTELLANO:

21 Q. Good afternoon, sir. Please tell us what  
22 you do for a living.

23 A. I'm a correctional officer at Southern New  
24 Mexico Correctional Facility.

25 Q. How long have you been a correctional

1 officer?

2 A. Eighteen years.

3 Q. Tell us a little bit about your training  
4 and experience.

5 A. I worked here from '99 till 2008. Then I  
6 went to Texas TDCJ Prisons for three years, then I  
7 came back to Southern, went through the academy in  
8 Santa Fe twice, went through West Texas Community  
9 College for the TDCJ Prisons.

10 Q. What does TDCJ stand for?

11 A. Texas Department of Criminal Justice.

12 Q. And which facilities in the state have you  
13 worked?

14 A. In New Mexico, just at Southern.

15 Q. In New Mexico?

16 A. Just at Southern New Mexico.

17 Q. And what are your normal responsibilities  
18 over there?

19 A. Like roving control centers, just safety  
20 and security, making sure that everything runs in a  
21 smooth, orderly manner.

22 Q. When you say "control center," what does  
23 that refer to?

24 A. The housing unit control center. You open  
25 doors, make sure, control movement, make sure

1 everything runs as smooth as possible.

2 Q. When you use the term "roving," what does  
3 that mean?

4 A. Where you're down on the floor interacting  
5 with the inmates, doing shakedowns, serving chow,  
6 just normal everyday things.

7 Q. What's a shakedown?

8 A. Where you go in the inmate's cell and  
9 search for contraband.

10 Q. When you search for contraband, what do  
11 you do when an inmate has illegal mail or illegal  
12 materials in the cell?

13 A. Pick it up, thumb through it, don't read  
14 it, and then just put it back where it was at.

15 Q. Why are you not supposed to read it?

16 A. Because it might be on a case that they're  
17 working on at the time.

18 Q. When you say thumb through it, what are  
19 you thumbing through for?

20 A. For contraband, drugs, weapons, things out  
21 of the ordinary.

22 Q. Now, were you on duty on March 7, 2014?

23 A. Yes.

24 Q. At approximately 5:18 p.m.?

25 A. Yes.



1 Q. What were you doing at that time?

2 A. I was roving in Number 1.

3 Q. What is 1-A?

4 A. It was the SNM housing unit.

5 Q. And what were you doing as part of your  
6 roving responsibilities?

7 A. At that particular time, we were escorting  
8 the nurse to pass out meds.

9 Q. Okay. So in other words, if any of the  
10 inmates take medications, do you escort the nurse so  
11 they can be passed out to the inmates?

12 A. Yes.

13 Q. All right. On that occasion, were you  
14 passing through blue pod at any point?

15 A. We started in green pod, then we went to  
16 blue, then we went to yellow pod.

17 Q. So the jury understands, are green, yellow  
18 and blue pods in the same building?

19 A. Yes.

20 Q. And in which order are they? You went  
21 from bottom to top in terms of the structure, or if  
22 you're looking at a diagram, where would blue,  
23 yellow, and green pods be?

24 A. Yellow pod is A pod, blue pod is B pod,  
25 and green pod is C pod. So if you walk in the front

1 door, you'd first see green pod. Then you look to  
2 the left, it would be blue pod. Around the little  
3 corner would be yellow pod.

4 Q. Now, in the blue pod, during the time that  
5 you were there, did anything happen out of the  
6 ordinary?

7 A. No.

8 Q. What was the environment like in blue pod?

9  
10 A. Calm, no tension; everyday, normal  
11 activity.

12 Q. At the point that you were walking  
13 through, did you suspect that anything was going to  
14 happen?

15 A. No.

16 Q. About how much time did it take you to  
17 move from cell to cell and give the inmates who  
18 needed their medicine their medicine?

19 A. I think we were probably in there about  
20 five minutes, maybe a little bit longer.

21 Q. Do you remember how many inmates were in  
22 blue pod on that day?

23 A. I believe there were 11 assigned to that  
24 unit for that pod that day.

25 Q. Did you notice anything unusual about

1 anything going on in green pod, or did you make it  
2 to green pod on that day?

3 A. We started in green pod, then went to blue  
4 pod, then we ended up in yellow pod. Green pod was  
5 normal activity, too, nothing out of the ordinary.

6 Q. What, if anything, did you notice in the  
7 yellow pod?

8 A. They were a little bit more rowdy, loud.

9 Q. Do you recall if there were any new  
10 inmates who had arrived at the yellow pod?

11 A. There was three new intakes that probably  
12 came a day or two before.

13 Q. You say three new intakes?

14 A. Yes, they were on orientation status.

15 Q. Tell us what orientation status is.

16 A. When they come in off the bus, they go in  
17 their cell, put on orientation status, where they  
18 can't come out, to make sure they're going to get  
19 along with all the other inmates. Then they'll go  
20 to committee, and that will be determined at that  
21 time if they're safe to come out.

22 Q. Now, when the new inmates come in, are the  
23 other inmates locked down so they're not  
24 interacting?

25 A. They're locked in their cell at the time

1 they enter the pod, yes.

2 Q. Then approximately how long does the  
3 orientation period last?

4 A. About one week.

5 Q. And during that time, if someone spots an  
6 enemy or someone they might not get along with, does  
7 that give them an opportunity to tell people before  
8 they're moved into the larger pod?

9 A. Yes.

10 Q. And you mentioned yellow pod seemed a  
11 little bit rowdy. Did it seem rowdier than usual?

12 A. Yes.

13 Q. Was that the pod with the three new  
14 intakes?

15 A. Yes.

16 Q. All right. You told us you gave out the  
17 meds in blue pod. What happened once you left the  
18 blue pod?

19 A. Exited blue pod, the door was shut. Then  
20 we went into yellow pod. And the nurse was passing  
21 out meds when the control officer knocked on the  
22 window and told us something was going on in blue  
23 pod. So I walked out of yellow pod, went over to  
24 the door of blue pod, and you could see Molina with  
25 a bloody chest and two other inmates attacking him.

1 Q. Now, when you said that you saw that, did  
2 you see him through an open door?

3 A. Just a little window. It's like a  
4 4-inch-wide window.

5 Q. And at that point was the door to that pod  
6 closed?

7 A. Yes.

8 Q. So tell us about movement between pods.  
9 Once you leave a pod, do you have the control  
10 officer close the door behind you?

11 A. Yes.

12 Q. Why is that?

13 A. Because you don't -- those inmates can't  
14 interact with other pods.

15 Q. And you said you heard knocking on the  
16 window. What window are you referring to?

17 A. Control windows upstairs that look down  
18 into the pods.

19 Q. Describe the control room for the members  
20 of the jury.

21 A. The control room is where you've got  
22 computers in each pod that open and close the doors.  
23 In the control center you have windows that look all  
24 the way around where you can see the inmates  
25 interacting in each pod.

1 Q. So you said interacting in each pod. From  
2 the control room, are you able to see into all three  
3 of the pods by scanning through the windows?

4 A. Yes, you walk around the control center,  
5 you can see in all three pods.

6 Q. Okay. So how long does it take you to --  
7 once you hear the knocking on the window, how long  
8 does it take you to move back to the yellow pod --  
9 the blue pod door?

10 A. Probably about 15, 20 seconds from exiting  
11 yellow pod to get over -- from when the knocking  
12 started, it took about 15 seconds to get to the blue  
13 pod door.

14 Q. And when that happened, you said you saw  
15 Javier Molina?

16 A. Yes.

17 Q. What was going on with him at that time?

18 A. It looked like they were horse-playing. I  
19 told them, "Cut it out."

20 And then when he turned around, you could  
21 see the white shirt he had had blood on it. That's  
22 when I yelled in the pod to lock it down where the  
23 inmates go into their cells.

24 Q. Since you first thought it was just  
25 horseplay, was his back to you first?

1 A. Yes.

2 Q. Then when he turned, you saw that it was  
3 something different?

4 A. Yes.

5 Q. What does the term "lock it down" mean?

6 A. Where each inmate goes in their assigned  
7 cells.

8 Q. And at this point, are you still behind a  
9 closed door which keeps you outside of the pod?

10 A. Yes.

11 Q. Are you able to go in right away?

12 A. No.

13 Q. Why not?

14 A. We have to wait for backup, for our  
15 safety, for our first-team responders to show up so  
16 we have more numbers, and where we don't walk into  
17 an incident with ourselves getting hurt.

18 Q. So at the point that you're standing at  
19 the door, you see an altercation going on inside,  
20 who else is with you at that immediate --

21 A. My other rover. He's right behind me. He  
22 can't see nothing because I'm in the way of the  
23 door -- sorry, the window.

24 Q. And in addition to the two other people  
25 you saw, did you know if anyone else was involved in

1 this altercation?

2 A. Not at that time, no.

3 Q. Okay. So what's the procedure, then, once  
4 you see this and you called a lockdown? What's  
5 next?

6 A. We wait for the first team responders to  
7 get there. Then once we have enough staff, we  
8 enter, and then we lock that pod down.

9 Q. Do you recall about how long it took for  
10 the first team responders to get there?

11 A. It felt like forever, but it was just  
12 probably about a minute, minute and a half.

13 Q. Why do you say it felt like forever?

14 A. Because we wanted to get in and help, but  
15 you had to wait for your help to help you.

16 Q. Could you tell by looking at him that  
17 Mr. Molina was in any kind of distress?

18 A. At that time, no. Once --

19 Q. Go ahead.

20 A. I say once the door opened, that's -- once  
21 the first team got through, you could tell he was  
22 starting...

23 Q. Describe for the jury what you saw once  
24 the door opened.

25 A. Once the first team got there, they came



1 into the little corridor down below. The control  
2 officer then opened the blue door and Molina fell to  
3 the ground, and you could see his hands were --  
4 fists clenched closed, his eyes rolled back in his  
5 head, and his hands just opened up, and he never  
6 moved again.

7 Q. Now, since you were doing rounds with  
8 someone else administering medication, was that  
9 person a medical personnel?

10 A. She was a nurse.

11 Q. What, if anything, did she do to try to  
12 render assistance to Mr. Molina?

13 A. After we got the pod secured, she came in  
14 and started -- she cut off his shirt and then tried  
15 plugging holes or stab wounds, trying to stop the  
16 bleeding.

17 Q. Now, you also mentioned locking down the  
18 facilities. So when the doors first opened and you  
19 see Mr. Molina, are there still other inmates in the  
20 common area?

21 A. Yes, there is.

22 Q. What did they do with the inmates?

23 A. Put them in their assigned housing unit or  
24 assigned cells.

25 Q. Did you have any problem with any of the

1 inmates, getting them back in their cells at that  
2 point?

3 A. Not when we had enough staff in there, no.

4 Q. You mentioned Mr. Molina's eyes rolling  
5 back in his head. What happened to him after the  
6 first responders got there?

7 A. His eyes were already rolled back in his  
8 head by the time they started first aid on him.

9 Q. And what happened to him eventually?

10 A. They put him on a gurney and hauled him to  
11 the infirmary. People were performing CPR on him.

12 Q. Even when they were moving him on the  
13 gurney, were they trying to render medical aid to  
14 him?

15 A. Yes, sir.

16 Q. Did you have any other involvement with  
17 this incident once Mr. Molina was removed from the  
18 pod?

19 A. No, sir.

20 Q. What did you do the rest of that night?

21 A. I gave my witness statement and talked to  
22 the state police investigators.

23 Q. So eventually, people responded to  
24 investigate?

25 A. Yes.

1 Q. Now I'm going to ask you about whether you  
2 work in the control center from time to time.

3 A. Yes.

4 Q. And then I'm also going to ask you about  
5 roving. When you're in the control center, are you  
6 able to see sometimes if inmates are trying to pass  
7 kites or anything else between them?

8 A. Yes.

9 Q. And have you tried to respond quickly  
10 enough before to intercept a kite or whatever else  
11 is being passed?

12 A. I've tried, but it's almost impossible to  
13 catch them.

14 Q. Why do you say that?

15 A. By the time they hear the door open, the  
16 fishing lines are pulled or it's gone by the time  
17 you get in there.

18 Q. Now, you mentioned fishing line. What is  
19 a fishing line?

20 A. A string where they make, like, a fishing  
21 line and throw it from cell to cell to pass whatever  
22 they need to pass to other rooms.

23 Q. So tell us what you've seen before. If an  
24 inmate is in his cell and you see a line under the  
25 door with something at the end of it, does it just

1 sit there, or how does it get to another location?

2 A. They throw it, slide it on the floor, and  
3 then another guy will slide his out there to catch  
4 that one and pull it out from the cell to tie  
5 whatever they want to it, to pass it on.

6 Q. Now, can you tell the members of the jury  
7 whether these pods have doors between them so that  
8 if you wanted to, you could walk between the pods?

9 A. Are you referring to the interpod doors?

10 Q. Yes.

11 A. Yes, they have interpod doors that have  
12 probably about a half-inch to one-inch gap that they  
13 could slide things underneath the doors to each pod.

14 Q. And have you witnessed that happening  
15 before?

16 A. Yes.

17 Q. Same question. When you've witnessed  
18 something like that happen, have you been able to  
19 respond quickly enough to intercept whatever was  
20 passed?

21 A. Normally we don't ever get it. There have  
22 been times we have, but normally not.

23 Q. Do you ever see -- when you have that door  
24 dividing the two pods, do you ever see inmates  
25 talking on both sides of the door?

1 A. Yes.

2 Q. Can you hear what they're saying from up  
3 at the control center?

4 A. No.

5 Q. And if you see people standing on both  
6 sides, are you always able to see if anything is  
7 passed at all?

8 A. Normally, you can't see if anything is  
9 passed.

10 Q. In terms of the layout of the pods, what  
11 pod is right next door to blue pod?

12 A. Yellow pod.

13 MR. CASTELLANO: May I have a moment, Your  
14 Honor?

15 THE COURT: You may.

16 MR. CASTELLANO: Thank you, Your Honor.  
17 Pass the witness.

18 THE COURT: Thank you, Mr. Castellano.  
19 Anybody like to go first? Mr. Villa? Ms.  
20 Jacks?

21 MR. VILLA: Thank you, Your Honor.

22 THE COURT: Mr. Villa.

23 CROSS-EXAMINATION

24 BY MR. VILLA:

25 Q. Good afternoon, Mr. Price.

1 A. Good afternoon.

2 Q. You testified that right before this  
3 incident took place with Mr. Molina, you were  
4 escorting the nurse to pass out medication?

5 A. Yes.

6 Q. And you went to green pod first; right?

7 A. Yes.

8 Q. And then you went to blue pod?

9 A. Yes.

10 Q. And then after blue pod, you went to  
11 yellow pod?

12 A. Yes.

13 Q. Those three pods -- they're all in the  
14 same housing unit?

15 A. Yes.

16 Q. So let me go back to the blue pod. Have  
17 you seen the video from the Javier Molina incident?

18 A. Yes.

19 Q. I'm going to ask you --

20 MR. VILLA: Can you pull up Government's  
21 11? Can I have Government's 11, please?

22 Q. It will show up on your screen there, sir,  
23 and I'm just going to show you the very beginning of  
24 channel 4. You can see on your screen channel 4,  
25 Mr. Price. Look on the top left corner. Do you see

1 the yellow writing there?

2 A. Yes, channel 5, 3/7/2014 at 17:21.

3 Q. Yes, sir. So what we're looking at right  
4 there, that's a view of the blue pod; right?

5 A. Yes.

6 Q. So I'm going to switch it over to a  
7 different channel, which is channel 4. Now we'll  
8 just stop it there for just a second, and so what  
9 I'm showing you is Government's Exhibit 11. Again  
10 in the top left, where I just drew a red underline,  
11 you see where it says channel 4, March 7, 2014,  
12 17:15?

13 A. Yes.

14 Q. And that's the day of the Javier Molina  
15 incident?

16 A. Yes.

17 Q. So let me clear the screen there, please,  
18 and I'm going to run it. If you would look down at  
19 the bottom, the bottom set of cells, in a minute  
20 you'll see some movement down there and folks coming  
21 out, so keep an eye on that. That's where I'll  
22 pause it.

23 (Tape played.)

24 Q. Let's pause it right there. So Officer,  
25 I've paused it at channel 4, 17:15:46:421; correct?

1 A. Yes.

2 Q. Did you see the movement down there,  
3 people starting to come out?

4 A. Yes.

5 Q. Okay. So we'll clear the screen and start  
6 it up again and just track that here for just a  
7 second.

8 (Tape played.)

9 Q. Let's go ahead and pause it there. So now  
10 I paused it for the record at 17:15:52:421; is that  
11 right?

12 A. Yes.

13 Q. Is this individual I circled -- is that  
14 the nurse you were escorting?

15 A. Yes.

16 Q. And behind the nurse that you're escorting  
17 I just circled, that's you?

18 A. Yes.

19 Q. So y'all had just come up from the bottom  
20 level and you're walking towards the exit to that  
21 blue pod; right?

22 A. Yes.

23 Q. We'll clear the screen there. And this  
24 occurred right within I don't know how many minutes,  
25 but minutes before the assault?



1 A. Yes.

2 Q. Okay. And the individual -- at least one  
3 of the individuals who was being given meds on that  
4 day was Rudy Perez; correct?

5 A. Yes.

6 Q. And Mr. Perez got medication every day,  
7 didn't he?

8 A. Yes.

9 Q. More than one time a day?

10 A. I believe so.

11 Q. And Mr. Perez at that time had a walker  
12 that he used?

13 A. Yes.

14 Q. Because he couldn't walk without the  
15 walker, could he?

16 A. I've always seen him with it, so...

17 Q. It's a little hard to hear you because of  
18 the microphone. Would you repeat your answer?

19 A. I said yeah, because I've always seen him  
20 with the walker.

21 Q. You've always seen Mr. Perez with the  
22 walker?

23 A. Yes.

24 Q. He usually spent most of the time in his  
25 room, didn't he?

1 A. Yes.

2 Q. Because he was very sick?

3 A. I just -- I don't have that answer on that  
4 one, if he's sick or not. I know he stayed in his  
5 house or his room.

6 Q. When you say "house," oftentimes the cells  
7 are referred to as houses?

8 A. Yes.

9 Q. And Mr. Perez stayed in his cell or in his  
10 house most of the time?

11 A. Yes.

12 Q. When you came back after you were alerted  
13 by the control officer that something was going on  
14 in blue pod, you were able to look into the door; is  
15 that right?

16 A. Yes.

17 Q. Was that the door from the hallway between  
18 the pods?

19 A. No, there is no window on the interpod  
20 doors. It's just on the doors looking inside to the  
21 pods, that lead inside to the pods.

22 Q. I see. So you looked through that -- it's  
23 a small window, but you could see that there were  
24 inmates attacking Mr. Molina?

25 A. Yes.

1 Q. And were you able to identify those  
2 inmates?

3 A. Not until a later time.

4 Q. How were you able to identify them at a  
5 later time? With the video?

6 A. Yes.

7 Q. So you identified the two individuals as  
8 Jerry Armenta and Jerry Montoya; correct?

9 A. Yes.

10 MR. VILLA: Can we switch back over,  
11 Ms. Gilbert?

12 Q. I want to show you Government's Exhibit  
13 606. Officer, I'm showing you on the screen there  
14 Government's Exhibit 606. That's Jerry Armenta?

15 A. Yes.

16 Q. He was one of the individuals attacking  
17 Mr. Molina?

18 A. Yes.

19 Q. And then let's go to Government's 596.  
20 That's a picture of Jerry Montoya?

21 A. Yes.

22 Q. He was also attacking Javier Molina?

23 A. Yes.

24 Q. So let me ask you just a little bit about  
25 that. You said once you were able to go into the

1 pod, once the other team was there to back you up,  
2 you saw Mr. Molina on the ground already; right?

3 A. Yes.

4 Q. And you said he had his fist closed and he  
5 opened it up and didn't move again?

6 A. Yes.

7 Q. Was he breathing at that point in time?

8 A. He made a slight verbal -- nothing else  
9 after that.

10 Q. So whatever Mr. Montoya and Mr. Armenta  
11 did to him, it appeared to you that they had killed  
12 him?

13 A. Yes.

14 Q. Quickly?

15 A. Yeah.

16 Q. Did you ever investigate whether Mario  
17 Rodriguez was involved in this assault?

18 A. No.

19 Q. Do you know who Mario Rodriguez is?

20 A. Yes.

21 Q. He often goes by Blue?

22 A. I guess.

23 Q. Do you know that?

24 A. No.

25 Q. I don't want you to guess. Let me show

1 you Government's Exhibit 586. Is that Mario  
2 Rodriguez?

3 A. Yes.

4 Q. Are you aware of Mr. Rodriguez's  
5 reputation at the prison there?

6 A. No.

7 MR. VILLA: May I have just a moment, Your  
8 Honor.

9 THE COURT: You may.

10 BY MR. VILLA:

11 Q. Officer Price, in the blue pod with the  
12 cells, how do the doors inside the individual inmate  
13 cells get opened?

14 A. Through the control center.

15 Q. There's an officer in the control center?

16 A. Yes.

17 Q. Were there any rules about when those  
18 doors get opened or shut?

19 A. It was -- at that point in time, it was  
20 every hour they got opened for 10 minutes for a  
21 bathroom break, then they got closed.

22 Q. Okay. So explain that to the jury. Why  
23 would they need to be open for a bathroom break?

24 A. Because there's no bathrooms in the pods,  
25 so you have to give them a break. So we'd open the

1 doors every hour for five or ten minutes to let them  
2 use the restroom. Then once they came out, we  
3 secured the doors.

4 Q. So the inmates during the day -- I don't  
5 know if you remember the time; it was about 1700, a  
6 little bit after, so that's about 5:00; right?

7 A. Yes.

8 Q. At that point in time, they're outside of  
9 the cells in the day room?

10 A. Yes.

11 Q. And they don't get to go back into their  
12 cells except every hour on the hour for a bathroom  
13 break?

14 A. Yes.

15 Q. When they do that, do they open all of the  
16 doors at once, or how does that happen?

17 A. Normally it's all at once.

18 Q. You say normally. Is there something --

19 A. We've changed policies since then.

20 Q. But at the time, March 7, 2014, the policy  
21 was open all the doors at once?

22 A. Yes.

23 Q. And an inmate can go in, use the restroom,  
24 and come back out?

25 A. Yes.

1 Q. Or they could stay in their cell.

2 A. Or they could stay in.

3 Q. Like Rudy Perez often did.

4 A. Yes.

5 Q. What if it's, you know, 5:15 and an inmate  
6 wants to go into their cell? Do they just have to  
7 wait the hour?

8 A. Normally, yes, unless an officer wants to  
9 go in the pod to have the door open. Because an  
10 officer has to be in the pod for the door to be  
11 open.

12 Q. There has to be an officer in the pod to  
13 open it?

14 A. There is supposed to be an officer in the  
15 pod to open the door.

16 Q. Is that true even on the hour, when they  
17 open them all?

18 A. Yes.

19 Q. Is there a way to open the doors even if  
20 there is not an officer in the pod?

21 A. Well, the control officer can do it, but  
22 he's not supposed to.

23 Q. Okay. So for him in the control room --  
24 which is not in the pod; right?

25 A. Yes.

1 Q. It's above the pod, sort of overlooking  
2 it?

3 A. Yes.

4 Q. He or she can push a button and open the  
5 doors if they want to?

6 A. Yes.

7 Q. But they're not supposed to.

8 A. Yes.

9 Q. Do you know who opened Javier Molina's  
10 door before he was assaulted?

11 A. That -- I don't have that answer.

12 MR. VILLA: That's all the questions I  
13 have.

14 THE COURT: All right. Thank you, Mr.  
15 Villa.

16 Mr. Maynard, do you want to go next?

17 CROSS-EXAMINATION

18 BY MR. MAYNARD:

19 Q. Just a few questions, Mr. Price. You  
20 mentioned that you could see from the hallway that  
21 there was something, some activity, unusual  
22 activity, going on in the blue pod; correct?

23 A. Yes.

24 Q. Now, you can see into the pods from the  
25 hallway of the building; correct? There's small



1 windows or control windows?

2 A. You can see from the control center down  
3 into all three pods, and then at each door there is  
4 a little window to look into.

5 Q. Okay. Now, however, is it possible for  
6 people in one pod to see what's happening in another  
7 pod?

8 A. No.

9 Q. So there's no line of sight between any of  
10 the pods? The only line of sight into a pod is from  
11 the hallway?

12 A. Yes.

13 Q. And in addition, of course, the doors  
14 between each pod -- they're controlled by the  
15 control center.

16 A. Yes.

17 Q. And they don't have windows.

18 A. Can you repeat that?

19 Q. They don't have windows?

20 A. The control center?

21 Q. No, the doors between pods.

22 A. No, they do not.

23 Q. All right. Now, when -- Exhibit 11 I  
24 think was the number that was being shown a moment  
25 ago. You could see -- what you see are the video

1 images from the cameras in the pods.

2 A. Yes.

3 Q. And each pod has a number, I think three  
4 cameras showing different angles?

5 A. Yes.

6 Q. Now, when you were looking at that video,  
7 could you see, in the corner of one of the images,  
8 the door that would go into, I guess, one of the  
9 neighboring pods? Would that be in the field of  
10 vision of the camera?

11 A. From those angles of the cameras I saw, I  
12 couldn't see the interpod doors.

13 MR. MAYNARD: Could we put up -- I think  
14 it's number 11. The other side, the other angle.

15 Q. Now, when you look over to the far right,  
16 is that a door into a cell or between pods?

17 A. That's for --

18 Q. If you know.

19 A. I see the door that goes out, the  
20 emergency exit door. That's the only one I can see.

21 Q. All right. Is that going into another  
22 pod, or just an emergency exit?

23 A. It's an emergency exit going outside.

24 Q. Do you know which cameras were operating?  
25 We've seen two angles in this particular pod.

1 A. Yes.

2 Q. Reflecting two cameras?

3 A. Yes.

4 Q. How many cameras are normally in each pod?

5 A. Three.

6 Q. Three. So what we see is sort of a  
7 left-hand angle and a center angle, but the right  
8 angle we don't have.

9 A. Correct.

10 THE COURT: Mr. Maynard, would this be a  
11 good time for us to take our lunch break?

12 MR. MAYNARD: Yes, I have no further  
13 questions.

14 THE COURT: All right. We'll be in recess  
15 for about an hour. All rise.

16 (The jury left the courtroom.)

17 THE COURT: All right. For planning  
18 purposes this afternoon, I'm inclined to allow the  
19 Baca statement "I want you to." I think that would  
20 be a Rule 8033 statement as then existing state of  
21 mind. And then it's also a Rule 801(d)(2)(E)  
22 co-conspirator statement.

23 Then T. Martinez' statement qualifies as a  
24 co-conspirator statement under 801(d)(2)(E).

25 And then the other one is Calbert's

1 statement about Perez. I think this should come in  
2 as a party opponent admission, 801(d)(2)(A). So  
3 that's what I'm inclined to do on those for planning  
4 purposes.

5 MR. LOWRY: Could I get more specificity  
6 as to what statement we're talking about for the  
7 Baca statement?

8 THE COURT: The one that's in the 302 that  
9 says, "Pup, Anthony Baca, wants you to take this  
10 down there."

11 MR. LOWRY: Okay.

12 MR. BECK: Your Honor, and just for the  
13 record, so that we make a record, I think the Court  
14 struck Mr. Rubio's response to Mr. Jewkes' question  
15 about why he was put in Level 6. The United States  
16 does believe that was responsive, but the United  
17 States is fine with the Court striking it. Just for  
18 the record, we believe it was responsive.

19 THE COURT: All right. See y'all about an  
20 hour.

21 (The Court stood in recess.)

22 THE COURT: All right. We'll go back on  
23 the record.

24 Ms. Jacks, you had come to the podium.  
25 Are you going to be the next examiner?

1 MS. JACKS: I was getting ready.

2 THE COURT: Let me ask -- you know, I  
3 haven't established any order. Am I doing okay just  
4 kind of looking and seeing who is getting up, or do  
5 y'all want me to do -- you're doing okay on that?  
6 All right. So I'll just keeping doing it. I assume  
7 y'all have got it divided up and you've got your  
8 stuff, so I'll just keep doing it.

9 Ms. Fox-Young?

10 MS. FOX-YOUNG: Your Honor, I would like  
11 to provide the Court with one more 302 along the  
12 lines of what we were discussing with the Court this  
13 morning, and it begins with Bates 43650. It's an  
14 interview of Lupe Urquizo. I don't know when he's  
15 going to be on the stand, but we'd like the Court to  
16 consider this information before he comes on the  
17 stand, if he is to come on the stand. This is of an  
18 interview conducted August 22, 2017. And the entire  
19 prosecution team -- well, all the assistant U.S.  
20 Attorneys were present for the interview, along with  
21 other agents.

22 There is a lot of detail in there. I  
23 won't do it now. I won't recite it for the record.  
24 The Court could take a look if the Court might  
25 indulge us.

1 But in particular with respect to Mr.  
2 Perez, there are alleged statements of Mr. Perez  
3 included in here. Clearly, Rule 16, and you know, I  
4 won't go line by line, but there's a lot of  
5 information in here. This document, along with  
6 hundreds of others, was not produced until January  
7 12. I believe that's true. I've just checked.

8 THE COURT: Well, I've looked at some of  
9 these, and some of them we got through this morning.  
10 I'm going to have to have a lot of help if you're  
11 going to really push this issue. It doesn't -- it's  
12 not intuitive to me that it's either Rule 16 or  
13 Brady or Giglio. I'm just not seeing it. It looks  
14 like Jencks material.

15 MS. FOX-YOUNG: Your Honor, this one in  
16 particular has statements of Rudy Perez.

17 THE COURT: Okay.

18 MS. FOX-YOUNG: So I think that's clearly  
19 Rule 16. I don't know if the Court would like to  
20 look at it, or if the Court wants us to submit some  
21 paper.

22 THE COURT: If you want to give it to me.  
23 Do you know when Urquizo is going to be up?

24 MR. BECK: He'll be up early next week.

25 THE COURT: Next week? All right. I'll

1 take a look at it, if you want to go ahead and give  
2 it to me. Now, this is probably the procedure to do  
3 it. I need to take a look at it. But your specific  
4 problem here is going to be the statement that Mr.  
5 Beck has identified in his letter? Is that going to  
6 be the particular problem? Or is this sort of the  
7 continuation of the -- that I should include  
8 witnesses for Brady and Giglio?

9 MS. FOX-YOUNG: Both, Your Honor.

10 THE COURT: Both.

11 MS. FOX-YOUNG: But particular with regard  
12 to this witness and this interview, which was  
13 conducted months and months and months ago, there is  
14 a statement of Rudy Perez that shouldn't come in,  
15 should have been disclosed, it should have been  
16 disclosed long before January 12, and it's at the  
17 end of that document. There is a section on Molina.  
18 There is a section on Perez. And it's just six  
19 lines, and we think the Court ought not to let it  
20 in.

21 THE COURT: All right. I'll take a look  
22 at it. All rise.

23 (The jury entered the courtroom.)

24 THE COURT: All right. Everyone be  
25 seated.

1 All right, Mr. Price, I'll remind you that  
2 you're still under oath. Ms. Jacks?

3 And you were done, Mr. Maynard?

4 MR. MAYNARD: Yes, Your Honor.

5 THE COURT: Thank you, Mr. Maynard.

6 Ms. Jacks.

7 MS. JACKS: Thank you.

8 CROSS-EXAMINATION

9 BY MS. JACKS:

10 Q. Good afternoon, Mr. Price. How are you?

11 A. Pretty good.

12 Q. I want to sort of go back and ask you some  
13 questions in probably a deliberate way about the  
14 unit where Mr. Molina was killed. And so up on the  
15 Elmo is a diagram. I think it's a copy of the  
16 Government's Exhibit 162. And is that the layout of  
17 Unit 1-A?

18 A. Yes.

19 Q. Okay. Now, the day, March 7, 2014, you  
20 were working in Unit 1-A; is that right?

21 A. Yes.

22 Q. And Unit 1-A consists of three separate  
23 housing areas?

24 A. Yes.

25 Q. Known as blue, yellow, and green pods?



1 A. Or A, B, and C.

2 Q. Or A, B, and C. So I want to just take a  
3 minute and mark on this diagram, starting with this  
4 area here.

5 A. That would be blue pod, or B pod.

6 Q. So it's blue, B. And what about the one  
7 in the middle?

8 A. That's A pod, would be yellow pod.

9 Q. I'm just writing that in the housing unit  
10 area. And the last one?

11 A. Would be green pod, C pod.

12 Q. And this area in the middle that's marked  
13 officer station area --

14 A. That's the control center.

15 Q. Okay. And have we also referred to that  
16 as the bubble?

17 A. Yes.

18 Q. How many other correctional officers  
19 worked with you that day, that shift?

20 A. In that housing unit?

21 Q. In that particular housing unit.

22 A. Two other officers.

23 Q. So it's a total of three correctional  
24 officers in that Unit 1-A?

25 A. Yes.

1 Q. And when you're working, where are the  
2 officers positioned during the shift?

3 A. What do you mean by that?

4 Q. Well, is there one officer that's always  
5 in the bubble?

6 A. Yes.

7 Q. Why don't you just explain how the duties  
8 are divided.

9 A. Like the control officer stays in the  
10 bubble all day long. He controls all the movement  
11 in and out of that unit.

12 Q. Okay.

13 A. Then the rovers, the other two officers,  
14 walk the floor and do the normal daily routine, what  
15 we do.

16 Q. Of --

17 A. Correctional officer, like, walking the  
18 unit every hour to make sure everybody is living,  
19 breathing flesh; shakedowns, passing food trays out,  
20 passing the mail out.

21 Q. Letting inmates out to rec?

22 A. Yes.

23 Q. Escorting religious staff?

24 A. Yes.

25 Q. Taking inmates in and out of pods?

1 A. Normally after a certain time, inmates  
2 normally don't leave the unit.

3 Q. They're usually in their particular unit  
4 24 hours a day, seven days a week?

5 A. No, they go out to rec. But by 5:00, rec  
6 is already over for the day.

7 Q. All right. So tell us -- there are three  
8 shifts; right?

9 A. Yes.

10 Q. So can you just briefly describe what the  
11 three shifts are and the time periods they  
12 encompass?

13 A. Graveyard, 10:00 p.m. to 6:00 a.m. Day  
14 shift is 6:00 a.m. to 2:00 p.m. Swing shift, 2:00  
15 p.m. to 10:00 p.m.

16 Q. And the day that Mr. Molina was killed,  
17 were you working swing shift?

18 A. I was working overtime on swing shift,  
19 yes.

20 Q. So did you also work day shift?

21 A. Yes.

22 Q. And so that particular day, you were going  
23 to work a total of 16 hours?

24 A. Yes.

25 Q. There are doors between the units; right?

1 A. What do you mean?

2 Q. Well, I'm sorry, between blue pod and  
3 yellow pod, there are some doors.

4 A. Yes.

5 Q. And on this diagram, can you -- well, let  
6 me see if I can point to it, since I've got it here  
7 on the Elmo. Let's see. Are the doors between the  
8 units right here?

9 A. Yes.

10 Q. Between blue pod and yellow pod?

11 A. Yes.

12 Q. Just for the record, I'm going to place,  
13 like, a circle on this diagram. Have I done it in  
14 the right area?

15 A. Yes.

16 Q. And when I look at the diagram, it looks  
17 like it kind of shows, like, the dots don't go all  
18 the way across. Is it possible, like, during the  
19 day for inmates from blue pod just to walk into  
20 yellow pod?

21 A. No.

22 Q. So there is a solid door there; right?

23 A. There is a solid wall and a solid door.

24 Q. Is the door locked?

25 A. Yes.

1 Q. And is it a door that normally inmates go  
2 through at any time?

3 A. No.

4 Q. Who uses that door, if anybody?

5 A. They're put there for emergency purposes.  
6 Otherwise, we do not use them.

7 Q. So normally, the door is not -- you'll go  
8 through a whole shift and that door will never be  
9 opened?

10 A. You're correct.

11 Q. Now, I think you were asked some questions  
12 about fishing and about people putting things  
13 underneath the door. Do you recall those questions?

14 A. Yes.

15 Q. And I think your answer was that -- when  
16 you answered, you were talking about you could see  
17 things like that happening; right?

18 A. Yes.

19 Q. And you're talking about that's from your  
20 position in the bubble?

21 A. Yes.

22 Q. Okay. So in the bubble, there's glass all  
23 around; right?

24 A. Yes.

25 Q. And is the bubble designed to try to give

1 you maximum visibility into the housing unit?

2 A. Yes.

3 Q. I mean, what's the point of being up  
4 there?

5 A. To watch to see what the inmates are doing  
6 in the pods.

7 Q. Okay. That's part of your job; right?

8 A. Yes.

9 Q. And from the bubble, you can see if  
10 inmates are fishing or if inmates are at the door  
11 exchanging materials?

12 A. Yes.

13 Q. But I think what you said is: By the time  
14 you get down from the bubble and out on the tier,  
15 you can't find out what was being fished or  
16 transferred?

17 A. Correct.

18 Q. Okay. And so the day that Mr. Molina was  
19 killed, you worked both the day shift and the swing  
20 shift; right?

21 A. Yes.

22 Q. Did you ever personally observe any sort  
23 of activity at this door that connects blue pod and  
24 yellow pod?

25 A. I can't remember.

1 Q. Okay. As part of your job as a  
2 correctional officer, do you guys have to keep some  
3 sort of log about events on the unit during your  
4 shift?

5 A. The control officer does.

6 Q. Okay. And are those kept as a matter of  
7 course in your job as a correctional officer?

8 A. Yes.

9 Q. And they are handwritten logs?

10 A. Yes.

11 Q. What sort of information are you supposed  
12 to record on those logs?

13 A. Any activity that goes on in the housing  
14 unit, like when inmates come out of their cells,  
15 when chow comes in, when we take them out to rec,  
16 when we return them to rec, when an officer goes  
17 into each pod, when nurses come in, do the rounds,  
18 education.

19 Q. So just about everything that happens on  
20 the unit?

21 A. Yes.

22 Q. Do you record the times when you walk  
23 through the unit?

24 A. Yes.

25 Q. And do you record the times when inmates

1 are locked down for count?

2 A. Yes.

3 Q. And do you record, like, if there's  
4 incidents with inmates that are, I don't know, doing  
5 things that are breaking the rules of the prison?

6 A. Like if there's a fight that breaks out,  
7 that gets logged in. But if it's a petty violation,  
8 no.

9 Q. So if there's some sort of what you would  
10 call like a major disturbance or something like  
11 that?

12 A. Yes.

13 Q. And if inmates are moved in and out of the  
14 pod, is that also recorded?

15 A. Yes.

16 Q. I'd like to show you what's been marked as  
17 Defendants' Exhibit S-5.

18 MS. JACKS: Can we admit S-5? It's a  
19 housing unit log, and I think the Government had a  
20 chance to review it over lunch.

21 THE COURT: Any objection, Mr. Castellano?

22 MR. CASTELLANO: Your Honor, I would ask  
23 that counsel lay a foundation and if she can, then  
24 that's fine, with this witness.

25 THE COURT: All right. Go ahead and try



1 to lay a foundation.

2 MS. JACKS: I kind of thought I just did,  
3 but I'll try again.

4 MR. CASTELLANO: She didn't have the  
5 document. What I'm asking is if she'd show it to  
6 him and if he recognizes it.

7 MS. JACKS: No problem.

8 MR. CASTELLANO: If she can --

9 MS. JACKS: So I don't have to keep  
10 walking up there, I'm going to show him S-4, S-5,  
11 and S-6. While he's looking at that, can I mark  
12 this diagram that we've written on as Defendants'  
13 Exhibit next in order?

14 THE COURT: Any objection to that, Mr.  
15 Castellano?

16 MR. CASTELLANO: No objection, Your Honor.

17 THE COURT: From any other defendants?  
18 All right. It will be so marked.

19 What number does that end up with, Ms.  
20 Jacks?

21 MS. JACKS: I think it's EM.

22 THE COURT: Defendants' Exhibit EM will be  
23 admitted into evidence.

24 (Defendants' Exhibit EM admitted.)

25 MS. JACKS: Thank you.

1 BY MS. JACKS:

2 Q. I'm sorry, Officer Price, I should have  
3 showed you those at lunch so you didn't have to do  
4 that.

5 A. They look like the logs from the day of  
6 the incident on March 7.

7 Q. And are they the logs from Housing Unit  
8 1-A for the day shift and the swing shift?

9 A. Yes.

10 Q. And you recognize those as the authentic  
11 logs from the day?

12 A. Yes.

13 MS. JACKS: Can those please be admitted?

14 THE COURT: Any objection?

15 MR. CASTELLANO: May I voir dire the  
16 witness, Your Honor?

17 THE COURT: I'm sorry?

18 MR. CASTELLANO: May I voir dire the  
19 witness?

20 THE COURT: Yes, you may.

21 VOIR DIRE EXAMINATION

22 BY MR. CASTELLANO:

23 Q. Officer Price, looking at the exhibits,  
24 how were these exhibits made and by whom?

25 A. What do you mean?

1 Q. Let me start with Defense S-6. Do you see  
2 it at the bottom of the page?

3 MS. JACKS: Let me help him so he can look  
4 at the right one.

5 I'll hand it to you.

6 A. Okay. Okay.

7 BY MR. CASTELLANO:

8 Q. So for the Defense Exhibit S-6, did you  
9 make this document or prepare it in any way?

10 A. No, sir.

11 Q. Without telling us what's in the document,  
12 do you know generally what this document is about or  
13 how it's made?

14 A. Yes.

15 Q. How is it made?

16 A. It's made, like, on our daily activity  
17 that we do in our work.

18 Q. And do you know if you, as a corrections  
19 officer or the person who did it, had a duty to keep  
20 and maintain these records?

21 A. Yes.

22 Q. Are they made in the regular course of  
23 business for corrections officers?

24 A. Yes.

25 Q. And generally speaking, looking at Defense

1 Exhibit S-6, what type of information is contained  
2 in that particular exhibit?

3 A. Our daily job assignments, when we do our  
4 security checks, when inmates went out to rec, when  
5 chow was served, and when the nurse enters to get  
6 escorted through the -- pass out meds.

7 Q. Does Defense Exhibit S-6 appear to be a  
8 document from March 7 of 2014?

9 A. Yes.

10 Q. Let me turn your attention to Defense  
11 Exhibit S-4.

12 A. Okay.

13 Q. Can you tell us, first of all, whether  
14 your signature is on this document?

15 A. No, sir, it's not on there.

16 Q. Once again, without telling us the  
17 contents of the document, what is Defendants'  
18 Exhibit S-4?

19 A. It's a day shift, daily log of activities  
20 of what occurred on day shift.

21 Q. When you say "activities," what type of  
22 activities are captured in a document like this?

23 A. The rounds, security checks, rec, chow,  
24 nurses, any activity that happens in that unit for  
25 the day.

1 Q. Same question: Do the officers have a  
2 duty to keep and maintain these records and record  
3 activity on these documents?

4 A. Yes, they do.

5 Q. Is that done as part of the regularly  
6 conducted business over at the prison?

7 A. Yes.

8 Q. Please look at S-5. Same question: Did  
9 you prepare this document?

10 A. No.

11 Q. And what can you tell us about this type  
12 of document?

13 A. This was after the incident that happened  
14 in 1-A that night. That's all I can gather out of  
15 this one; when officers went in the other pods to do  
16 their security checks.

17 Q. Okay. So do you know less about this  
18 document than the other ones?

19 A. Yes. It should be the same as the other  
20 ones, but I didn't know anything about this one.

21 MR. CASTELLANO: Your Honor, no objection  
22 to Defense Exhibit S-4 and S-6. I do object to S-5.  
23 He doesn't have the knowledge that he does of the  
24 other documents.

25 MS. JACKS: That's fine, Your Honor. I

1 only need one.

2 THE COURT: All right. So I'll admit  
3 Defendants' Exhibits S-4 and S-6. Anyone else on  
4 the defense side have any objection? Not hearing  
5 any, S-4 and S-6 will be admitted into evidence.

6 (Defendants' Exhibit S-4 and S-6  
7 admitted.)

8 CONTINUED CROSS-EXAMINATION

9 BY MS. JACKS:

10 Q. And Mr. Price, let me just ask you a  
11 question while you just looked at all those  
12 exhibits. Does it appear that after the incident in  
13 blue pod, a new log was started and the normal log  
14 that's kept every day was stopped?

15 A. Yes, it's pulled.

16 Q. Okay.

17 A. When a major incident like that happens,  
18 the logs get pulled and a new one starts at that  
19 time.

20 Q. Okay. And so Exhibit S-5, the one you  
21 said you were less familiar with, is actually the  
22 new log that was started because of the incident in  
23 blue pod?

24 A. Yes.

25 Q. Can we please look at S-4? All right.

1 Just a couple of quick questions. So looking at the  
2 top of the page, the date -- is that the date that  
3 the log is created?

4 A. Yes.

5 Q. And I think the next thing is, we have the  
6 boxes: Day, swing, and grave.

7 A. Yes.

8 Q. So that's just to be completed by the  
9 person filling out the log as to which shift it's  
10 being completed for?

11 A. Yes.

12 Q. Okay. Before we go much further, are you  
13 always a rover, or are you sometimes the officer  
14 that stays in the bubble?

15 A. Sometimes I'm the officer that stays in  
16 the bubble.

17 Q. So sometimes you complete these logs?

18 A. Yes.

19 Q. And sometimes somebody else on your  
20 three-man team does?

21 A. Yes.

22 Q. And the person who completes the log -- is  
23 their name somewhere on this form?

24 A. Yes.

25 Q. Where is that?

1 A. Where it says "CO assigned."

2 Q. Can you just touch the screen? Can we  
3 go -- one more question. This day, on March 7 of  
4 2014, you worked day shift and swing shift?

5 A. Yes.

6 Q. But if you come in and just work swing  
7 shift, when you take over from the day shift, do you  
8 review their log to see what was going on earlier  
9 that day?

10 A. The control officer is supposed to.

11 Q. Okay. So if you're the person that's  
12 assigned to be the control officer in the bubble,  
13 one of your duties is to kind of flip through the  
14 log of the shift before you and see if there was  
15 anything that needs to be followed up on?

16 A. Yes.

17 Q. Can we go to the next page? I want S-6.  
18 We were talking about swing shift; right?

19 A. Yes.

20 Q. All right. And can we zero in on the top  
21 of that page, like maybe the first, I don't know,  
22 third of it? Perfect.

23 So the time. Is that military time?

24 A. Yes.

25 Q. And then just translate -- let's just take



1 one of these. 1417. What happened at 1417 on March  
2 7 of 2014?

3 A. It says, "Price and Murphy entered C pod  
4 through the security check."

5 Q. And there was somebody that was escorted  
6 into the pod?

7 A. The librarian.

8 Q. That's the kind of thing that's logged in  
9 just over the general course of business?

10 A. Yes.

11 Q. And can we go down to -- let's see. Go  
12 down to the second third of the page.

13 Let's look at 1647, which is 4:47 in the  
14 afternoon?

15 A. Yes.

16 Q. And what's happening at 1647?

17 A. I just completed serving chow.

18 Q. When you feed the inmates, do they eat in  
19 the common area, or do they eat in their cells?

20 A. That day they ate in their cells because  
21 we hadn't cleared count.

22 Q. Is there somewhere on this log that shows  
23 when count happened?

24 A. Yes.

25 Q. Okay. Can you point us to where?

1 A. At 1600. At 1600 it says, "CO Price and  
2 Murphy enter C pod for formal count."

3 Q. And at formal count, does that mean that  
4 every inmate in the pod is actually in their cell  
5 with the door closed?

6 A. Yes.

7 Q. And is there somewhere on this log that  
8 tells us when count ended on March 7, 2014?

9 A. That I do not see.

10 Q. How long is count?

11 A. It's one hour or less.

12 Q. Okay. Can you look at the entry at -- is  
13 it 1609?

14 A. Yes.

15 Q. "CO Price, CO Murphy complete F/C. Exit A  
16 pod"?

17 A. Yes.

18 Q. What does F/C mean?

19 A. Formal count.

20 Q. So does it look like, according to this  
21 log, formal count was completed at 4:09 p.m.?

22 A. Yes.

23 Q. What happens once -- or what happened that  
24 day once count was completed?

25 A. We call in, make sure we had a good count.

1 Then we take our count sheets over to the captain's  
2 office for them to inspect them. Then we go pick up  
3 the chow cart and come back and feed.

4 Q. When you say you leave, you file your  
5 documents, and you bring the food back to the pod  
6 and then you take the food to each inmate in their  
7 cell?

8 A. Yes.

9 Q. Is there somewhere on this log that  
10 reflects when the doors were then reopened and when  
11 the inmates were able to leave their cells?

12 A. That I do not see.

13 Q. And at 1706 is there an entry about  
14 escorting the nurse?

15 A. Yes.

16 Q. And at that point in time, were the  
17 inmates in blue pod out of their cells or still in  
18 their cells?

19 A. They should have been out of their cells  
20 by then.

21 Q. And the entry just before that, the 1647  
22 entry, it says, "CO Price complete passing chow,  
23 exit A pod. S/C completed." What does that mean?

24 A. Security check was completed.

25 Q. Okay. Can you explain? What is a

1 security check?

2 A. A security check is when we go cell to  
3 cell to make sure every inmate is alive and  
4 breathing.

5 Q. So at 1647, every inmate was still in  
6 their own cell with the door closed?

7 A. Yes.

8 MS. JACKS: And is this log two pages?

9 MS. GILBERT: Yes.

10 BY MS. JACKS:

11 Q. Can we go to the bottom of the page and  
12 look at the last entry, please?

13 Is there an entry on the log that shows  
14 when the disturbance with Javier Molina happened?

15 A. I do not see one. Yes, I do. It says  
16 1719.

17 Q. Okay. 1719. And what does the entry say?

18 A. It says, "CO Price and CO Murphy exit A  
19 pod. Rushed into B pod."

20 Q. That's at the point where somebody was  
21 rapping on the window and telling you there was a  
22 disturbance; is that right?

23 A. Yes.

24 Q. Then at 1830, or 6:30 p.m., was there some  
25 event related to that disturbance?

1 A. Master control called emergency count.

2 Q. Tell us what that means.

3 A. That means the whole facility gets locked  
4 back down and they count every inmate in the whole  
5 facility.

6 Q. Then can we go to the last page of that  
7 exhibit that's page 1 of 2?

8 That's a few entries on the last page.  
9 Can you explain what is being documented here?

10 A. The officer is doing an emergency count in  
11 C pod and A pod.

12 Q. Okay. And then at, like, 1610 or 6:10  
13 p.m. was there change in who was in that bubble?

14 A. I honestly don't remember.

15 Q. There appears to be an entry that says,  
16 "Officer Lagarrate relieved me in my post."

17 A. I see that there, yes.

18 Q. What is that documenting?

19 A. The control officer got relieved.

20 Q. Okay. And as far as -- based on your  
21 recollection of that day, what did you do after the  
22 incident with Mr. Molina? Where did you go or what  
23 was going on with you the rest of that evening?

24 A. I stayed in the housing unit and assisted  
25 state police.

1 Q. I want to show you one other log, and then  
2 we'll move on.

3 Can we go S-4, please?

4 Officer Price, do you recognize this  
5 particular log from Unit 1-A?

6 A. That looks like the day shift log.

7 Q. Okay. From March 7 of 2014?

8 A. Yes.

9 Q. And this was a shift that you also worked?

10 A. Yes.

11 Q. Were you a rover on that shift, or were  
12 you the control officer in the bubble?

13 A. Looks like I was a rover that day.

14 Q. Looks like you were roving for quite a bit  
15 of time, hum?

16 A. Yeah.

17 Q. And can we look at the actual log entries,  
18 please? I just want to direct your attention to  
19 these entries, and can you just explain what you're  
20 documenting, what is being documented here?

21 A. They were documenting security checks in  
22 all three pods from 6:00, 7:00, 8:00, 9:00, and  
23 10:00. At 11:00 we did formal count. Then at 12:00  
24 and 1:00, it was just regular security checks.

25 Q. And does a security check mean that an

1 officer is actually walking each pod, each housing  
2 unit?

3 A. Yes, both rovers go down and do security  
4 checks together.

5 Q. Door to door?

6 A. Yes.

7 Q. Go past each cell?

8 A. Yes.

9 Q. And in these housing units in Unit 1-A,  
10 are the cells stacked in two layers?

11 A. Yes.

12 Q. Can you tell me how many are on each  
13 floor?

14 A. There's eight on top, eight on bottom.

15 Q. All right. And are all the cells full?  
16 Or were all the cells full on March 7 of 2014?

17 A. No, they had empty cells.

18 Q. And I think you said in blue pod on that  
19 particular day, your recollection was you had 11  
20 inmates?

21 A. Yes.

22 Q. And can we go to the next page?

23 We don't have to go through everything on  
24 this. I just want to take an overview of this.

25 Does this appear to be the entries regarding the day

1 shift about what was going on in Unit 1-A while you  
2 were the rover that day?

3 A. Yes, but I want to make a statement after  
4 reading that part. That was not me as second rover  
5 that day. I recognize the name now. Officer  
6 Tristan Irick.

7 Q. So were you working a different unit?

8 A. I was in a different unit on day shift but  
9 I was not working that one.

10 Q. Not Housing Unit 1-A?

11 A. Not Housing Unit 1-A for day shift.

12 Q. Okay. Thank you.

13 Can we look at exhibits starting with E-1?  
14 I'm going to have you go through a few pictures.

15 MR. CASTELLANO: I object, Your Honor.  
16 May we approach? I don't know that these have been  
17 disclosed.

18 THE COURT: What's the exhibit number on  
19 this?

20 MS. JACKS: Excuse me. I'm sorry. You're  
21 right.

22 MR. CASTELLANO: May we approach, Your  
23 Honor?

24 THE COURT: You may.

25 (The following proceedings were held at



1 the bench.)

2 MR. CASTELLANO: So I think -- I don't  
3 know that these were disclosed to us before. We did  
4 get them, I think, probably on the thumb drive.  
5 So --

6 MS. JACKS: This is a misunderstanding,  
7 because I asked Mr. Beck at lunch if you guys would  
8 have any objections to admitting these, so I thought  
9 there weren't any objections.

10 MR. VILLA: Your Honor, my office  
11 disclosed those in the first defense discovery  
12 deadline, if I'm not mistaken, but they were  
13 certainly disclosed as exhibits.

14 MR. CASTELLANO: I don't want to cut you  
15 off. That's why I want to check when they were  
16 disclosed. When were they disclosed?

17 MR. VILLA: I mean, we're talking maybe  
18 2016. I don't remember the first defense discovery  
19 deadline. Maybe spring of 2017.

20 MR. CASTELLANO: The only thing I would  
21 ask is that they note if there are any differences  
22 between March 7, 2014, and when these were taken.  
23 I'm sure it's years afterwards, so I would make sure  
24 we differentiate with this witness if there are  
25 changes.

1 THE COURT: If he can.

2 MR. CASTELLANO: If he can.

3 THE COURT: He can probably authenticate  
4 the pictures. He's probably got enough knowledge.  
5 If you need to lead him through that to see if  
6 there's changes, I'd be inclined to admit them.

7 MR. CASTELLANO: That's fine.

8 THE COURT: But you probably need to make  
9 sure if there are changes.

10 MS. JACKS: I'll try to remember to ask  
11 him.

12 MR. CASTELLANO: I think that's fine, as  
13 long as we do that. Thank you, Your Honor.

14 MS. JACKS: Do you want to show him those  
15 pictures right now?

16 (The following proceedings were held in  
17 open court.)

18 BY MS. JACKS:

19 Q. Officer Price, those are marked E-1  
20 through 18 up there on the bench before you. And  
21 I'd just ask you to take a look at those pictures  
22 and see if you recognize that to be Housing Unit 1-A  
23 at Southern New Mexico Correctional Facility.

24 A. Yes.

25 Q. Take your time and just flip through them

1 all. Okay?

2 A. It looks like 1-A.

3 Q. Basically what the housing unit looked  
4 like on March 7 of 2014?

5 A. Yes.

6 Q. And as we go through these pictures, if  
7 there's anything that you see that you think is  
8 different, will you bring that to our attention? In  
9 other words, if there's anything different in the  
10 picture than how it was set up on March 7, 2014,  
11 would you just point that out to us? And we're  
12 going to go through them one by one on the screen.

13 A. Okay.

14 MS. JACKS: May E1 through 18 be admitted?

15 THE COURT: Any objection?

16 MR. CASTELLANO: No, Your Honor.

17 THE COURT: E1 through E18 inclusive and  
18 without gaps are admitted into evidence.

19 (Defendants' Exhibits E-1 through E-18  
20 admitted.)

21 BY MS. JACKS:

22 Q. Thank you. So why don't we start with E1.  
23 Can you tell us what view is depicted in E1?

24 A. That looks like right when you walk into  
25 the door, the sliding door.

1 Q. And when we're talking about the door,  
2 we're talking about the one door that you go in and  
3 out of the unit in on a -- multiple times a day.

4 A. Yes, the door to that pod.

5 Q. And that's the door that has a window on  
6 it; right?

7 A. Yes.

8 Q. I think we have a picture of that. Okay.  
9 So in order to get to the upper tier, you go up the  
10 stairs?

11 A. Yes.

12 Q. Then there's a tier that you go down a few  
13 stairs to get to; right?

14 A. Yes.

15 Q. And then when you enter the unit, are you  
16 on the level of the day room?

17 A. Yes.

18 MS. JACKS: All right. You can go to the  
19 next one. E2.

20 Q. Can you briefly describe to us what this  
21 is, what view we're getting here?

22 A. That's just the average day room where  
23 it's got tables, where the inmates can sit and eat  
24 or play games or do schoolwork.

25 Q. And then you see the two layers of cells,

1 bottom layer, top layer?

2 A. Yes.

3 Q. Does this picture appear to be taken  
4 pretty much right after you walk into the pod, take  
5 a few steps in?

6 A. Yes.

7 MS. JACKS: All right. We can go to the  
8 next picture.

9 Q. So E3. What is depicted in E3?

10 A. That's a picture of the control center and  
11 the door looking into the control space.

12 Q. At the control center, that's where the  
13 officer that's not a rover sits and makes the log  
14 and keeps an eye out; right?

15 A. Yes.

16 Q. And it was the window -- does this control  
17 center also have windows that look onto yellow pod  
18 and green pod?

19 A. Yes.

20 Q. And was it the window of this control  
21 center that the control officer banged on to get  
22 your attention that there was a disturbance?

23 A. Not on that window per se, but it was a  
24 window like that.

25 Q. A similar window, but in -- the window

1 that overlooks green pod?

2 A. Yellow pod.

3 Q. I'm sorry, yellow pod. Okay. There's a  
4 hole in the window. What's that for?

5 A. That's a gun port for where you could pull  
6 a shotgun out to shoot less lethal ammunition. And  
7 that has been changed since March 7.

8 Q. Was there a hole in the window to use a  
9 gun through?

10 A. Yes, but it was much smaller at that time.

11 Q. Okay. And we see a blue door with an exit  
12 sign over it. Is that the door that you use to  
13 enter and exit pods multiple times a day?

14 A. Yes, and that's the window I looked  
15 through.

16 Q. And just above the exit sign, I see what  
17 looks like to be, like, a little round black thing.  
18 What is that?

19 A. Which one?

20 Q. I'm looking right here.

21 A. The one right above the exit? I believe  
22 that appears to be the camera.

23 Q. And this is also a camera here, just to  
24 the left of it?

25 A. Yes.

1 Q. And is there another camera around the  
2 corner?

3 A. Yes.

4 MS. JACKS: Can we have the next  
5 photograph? I think it's E4. Again, what is this  
6 view of?

7 A. Basically right when you walk in the door,  
8 the entrance door of B pod, or blue pod.

9 Q. Looking up to the upper tier and down to  
10 the lower tier?

11 A. Yes.

12 Q. Okay. E5?

13 A. That's basically the same thing right when  
14 you walk in just looking to the right a little bit.

15 Q. Okay. E6?

16 A. That's a little bit more to the right.

17 Q. E7?

18 A. That's all the way to the right.

19 Q. That's looking all the way towards the  
20 wall of blue pod that abuts yellow pod; is that  
21 right?

22 A. Yes.

23 Q. And I see two exit doors on the far  
24 right-hand side of that picture.

25 A. Yes.

1 Q. Are those the emergency exit doors?

2 A. No.

3 Q. Okay. What are those?

4 A. Those are interpod doors that go to the  
5 other pods.

6 Q. I thought you said there were some doors  
7 that were only there for emergencies, that weren't  
8 normally used.

9 A. That's those doors right there.

10 Q. So these doors are generally locked and no  
11 one goes in or out of them over the course of a  
12 shift, or many shifts?

13 A. Correct.

14 MS. JACKS: Can we have the next picture,  
15 please?

16 A. That's a picture further left where you  
17 could see the TV and the microwave and the phone.

18 Q. And we see those same two doors --

19 A. Yes.

20 Q. -- on the left side of this picture?

21 A. Yes.

22 MS. JACKS: What number was that?

23 MS. GILBERT: E8.

24 BY MS. JACKS:

25 Q. Okay. E9. That's just sort of panning



1 around in the same direction?

2 A. Yes.

3 Q. And we see the phone there on the wall;  
4 right?

5 A. Yes.

6 Q. And is the phone mounted on the wall just  
7 below the bubble?

8 A. Yes.

9 Q. And I think in that picture, do we see the  
10 other security camera?

11 A. Yes.

12 MS. JACKS: Can we have E10?

13 Q. What is this a view of?

14 A. That's a picture of right below the bubble  
15 and the janitor's closet and the door exiting to the  
16 little space outside.

17 Q. So the door that you use to enter and exit  
18 the unit?

19 A. Yes.

20 Q. So we sort of just panned around the whole  
21 unit just now.

22 A. Yes.

23 MS. JACKS: Are we on E11?

24 Q. What is this a view of?

25 A. That's a picture of the top tier looking

1 down.

2 Q. Okay. And you can see the bubble?

3 A. Yes.

4 Q. And do the officers in the bubble  
5 essentially look right over onto the top tier?

6 A. You can.

7 Q. Can you hear what's going on if you're in  
8 the control booth and you're the control officer?

9 A. If you have the little windows -- that  
10 little square window open, you can hear.

11 MS. JACKS: Can we see the next one?

12 Q. This is E12. Essentially the same view?

13 A. Yes.

14 Q. E13. Now, can you tell us what view is  
15 depicted here?

16 A. That's a picture of the top tier looking  
17 straight out to the other side of the --

18 Q. So this would be, like, if you were at the  
19 top of the stairs on the top tier and you turn and  
20 just look straight down the tier?

21 A. Yes.

22 Q. And in this photograph do you see cell  
23 105?

24 A. Yes.

25 Q. And is cell 105 the cell that was assigned

1 to Javier Molina on March 7 of 2014?

2 A. Yes.

3 MS. JACKS: Can we have the next one?

4 That's E14.

5 Q. So tell us what view this is, or how the  
6 view is changing?

7 A. It's just the camera angle turned a little  
8 bit more to the right on that one.

9 Q. So we're walking down the top tier and  
10 turning and looking towards the cells that start to  
11 run the other direction?

12 A. Yes.

13 Q. Okay. E15. Can you tell us what that is,  
14 Officer Price?

15 A. It's just a little bit more of an angle to  
16 the right.

17 Q. And on the far right-hand side of this  
18 photograph, do we see one of those exit doors that's  
19 used for emergencies?

20 A. Yes, the interpod doors.

21 Q. The interpod doors. Okay. E16. What is  
22 this?

23 A. Looks like it's in front of cell 105  
24 looking on the lower tier.

25 Q. And looking back towards the stairway;

1 right?

2 A. Yes.

3 Q. And we can't see it because there is  
4 somebody standing there, but if you were -- if that  
5 person wasn't there on the far left-hand side of the  
6 photograph, would you be able to see the door where  
7 you normally enter and exit the housing unit?

8 A. Yes.

9 MS. JACKS: Can we see the next one?

10 Q. And this is E17. What is the view here,  
11 Officer Price?

12 A. That's the view of the top tier on cells  
13 5, 6, 7, and 8.

14 Q. And that's taken from right around the  
15 corner right outside cell 105 looking towards yellow  
16 pod?

17 A. Yes.

18 MS. JACKS: And this is our last one;  
19 right? E18?

20 Q. Do you recognize the perspective that this  
21 photograph was taken from?

22 A. Looks like it was taken from the top tier  
23 right at the edge of the railing.

24 Q. Okay. And looking towards the direction  
25 of the bubble and kind of down; right?

1 A. Yes.

2 Q. And other than the size of the little gun  
3 port that's cut in the window of the bubble, did you  
4 notice anything about these pictures that was  
5 different than March 7, 2014?

6 A. I couldn't tell any changes other than the  
7 window.

8 Q. Okay. You were asked some questions about  
9 legal paperwork. Do you recall those questions?

10 A. Yes.

11 Q. Are inmates allowed to possess legal  
12 paperwork?

13 A. Yes.

14 Q. Okay. Based on New Mexico Department of  
15 Corrections regulations?

16 A. Yes.

17 Q. Are there restrictions on the type of  
18 legal materials they can possess?

19 A. I'm not 100% sure on that.

20 Q. Are you familiar with the New Mexico  
21 Department of Corrections policy, I think it's  
22 labeled CD-150200?

23 A. Probably.

24 Q. About inmate property and what they're  
25 allowed to have?

1 A. Yes.

2 Q. I mean, one of the things that the  
3 Department of Corrections controls with their  
4 inmates is what personal property they can actually  
5 possess; right?

6 A. Yes.

7 Q. Like down to the number of shirts you can  
8 have and the number of pants, the number of socks;  
9 right?

10 A. Yes.

11 Q. And then there's certain types of  
12 electronics an inmate might be able to possess,  
13 depending on where they're housed and how they've  
14 behaved?

15 A. Yes.

16 Q. And then there is a certain amount of what  
17 I think you called canteen items they're allowed to  
18 possess?

19 A. Yes.

20 Q. With respect to legal materials, are  
21 inmates permitted to possess legal materials of some  
22 types?

23 A. Yes.

24 Q. Are they permitted to possess legal  
25 materials regarding cases they intend to file?

1 A. Yes.

2 Q. And are they also permitted to possess  
3 legal materials related to cases that are filed and  
4 still active?

5 A. Yes.

6 Q. Other than those two types of legal  
7 materials, are there any other legal materials  
8 they're allowed to possess?

9 A. I believe only active cases that are  
10 active at the time.

11 Q. So either materials related to a case  
12 you're actively fighting, or related to a case that  
13 you intend to file?

14 A. Yes.

15 Q. I guess that's in relation to something  
16 like if someone was going to bring a civil rights  
17 action or something like that?

18 A. Yes.

19 Q. So part of your duties as a correctional  
20 officer is to make sure that the inmate isn't  
21 possessing legal materials that are unauthorized?

22 A. Correct. I don't read them, the legal  
23 material.

24 Q. But you are aware of which inmates have  
25 active pending cases that they're fighting; right?

1 A. Yes.

2 Q. Because they have to go back and forth to  
3 court?

4 A. Yes.

5 Q. And I guess inmates make you aware of  
6 materials related to cases they intend to file?

7 A. Yes.

8 Q. So that you don't take those?

9 A. Yes.

10 Q. Is there a form, a standard form, that the  
11 New Mexico Department of Corrections has for the  
12 purpose of inventorying an inmate's property?

13 A. Yes.

14 Q. And is that a form that you have filled  
15 out in the past?

16 A. It's been many years, but yes, I filled  
17 one out.

18 Q. When are those forms -- when would a  
19 correctional officer such as yourself be in a  
20 position of filling out that kind of form?

21 A. On days that they're going to get  
22 transferred out to another facility.

23 Q. Any other occasion?

24 A. Also when they get locked up, put in the  
25 hole.



1 Q. So when an inmate is going to be  
2 transferred, you would go through their property and  
3 inventory it?

4 A. Yes.

5 Q. And that's for the purpose of making sure  
6 they don't have any contraband?

7 A. Yes.

8 Q. Because you're not going to let them move  
9 contraband to another institution?

10 A. Yes.

11 Q. And the other situation that would present  
12 itself is if an inmate is going to be moved from  
13 their housing unit into a disciplinary housing unit?

14 A. Yes.

15 Q. And again, you would inventory their  
16 property?

17 A. Yes.

18 Q. When you inventory an inmate's property,  
19 is it placed somewhere or is there something you  
20 physically do with it?

21 A. After we inventory it, we place it in a  
22 property ID, for the property ID sergeant to re-go  
23 through it and re-inventory it again.

24 Q. So you put it in, like, a plastic bag?

25 A. Yes.

1 Q. It's a clear plastic bag?

2 A. Yes.

3 Q. Then you take it to the property officer  
4 and he double-checks your work?

5 A. Yes.

6 Q. And then is the inmate -- if the inmate is  
7 moved, let's say, for example, transferred to  
8 another institution, is he allowed to carry that  
9 plastic bag with him, like somebody would carry a  
10 suitcase?

11 A. No. It would get put on the transport  
12 van, but the inmate won't have access to it while  
13 he's on transport.

14 Q. So it gets transported at the same time as  
15 the inmate, but separate from the inmate.

16 A. Yes.

17 Q. Almost liked checked baggage on an  
18 airplane?

19 A. Yes.

20 Q. And at the other end, is it then supposed  
21 to go to the property officer at the new  
22 institution?

23 A. Yes.

24 Q. So property is transported at the same  
25 time as the inmate, but not carried by the inmate.

1 A. Correct.

2 Q. And then at the receiving institution, is  
3 there a requirement for an additional property  
4 inventory?

5 A. They will do another property inventory  
6 when it gets to a new location.

7 Q. And on the property inventory form, is  
8 there a place that the inmate has to acknowledge the  
9 correctness of the form?

10 A. He's supposed to sign for it when he  
11 receives his property.

12 Q. Okay. What about if you're packing  
13 somebody up to ship them somewhere else?

14 A. The inmate does not sign.

15 Q. He doesn't sign it?

16 A. No.

17 Q. He would sign it when he got it returned  
18 to him?

19 A. Yes.

20 Q. And would that be concurrent with  
21 returning the property to him.

22 A. Can you repeat that?

23 Q. Would that be at the same time? If I'm an  
24 inmate, I've just been transferred here to Las  
25 Cruces, so if you hand me my property back, would

1 you also hand me a copy of that inventory form and  
2 ask me to sign it?

3 A. You're supposed to, yes.

4 Q. Okay.

5 MS. JACKS: Thank you, Your Honor. I  
6 don't have anything further right now.

7 THE COURT: Thank you, Ms. Jacks.

8 Ms. Duncan, Mr. Lowry?

9 MS. DUNCAN: We have no questions, Your  
10 Honor.

11 THE COURT: All right. Mr. Castellano,  
12 redirect of Mr. Price?

13 MR. CASTELLANO: Yes, sir.

14 THE COURT: Mr. Castellano.

15 REDIRECT EXAMINATION

16 BY MR. CASTELLANO:

17 Q. All right, Officer Price, I'm going to  
18 show you --

19 MR. CASTELLANO: Can we have the  
20 visualizer please? Thank you.

21 Q. I'm going to show you Defendants' Exhibit  
22 E3, which is what you've referred to as the bubble.

23 A. Yes.

24 Q. And I'm going to circle a window here.  
25 Tell us what that is, please.

1 A. That's the gun port.

2 Q. And you mentioned that's a different size  
3 than it was on March 7 of 2014?

4 A. Yes.

5 Q. About how much smaller was it on that  
6 occasion?

7 A. See that little circle below right in  
8 here?

9 Q. Yes.

10 A. It was just a little bit bigger than that  
11 circle.

12 Q. And do you know if that caused any  
13 problems with trying to stop the Molina assault by  
14 not being able to put a weapon through that port?

15 A. I wasn't the one upstairs, so I couldn't  
16 answer that.

17 Q. Do you recall from your own experience how  
18 easy or difficult it was with a smaller port?

19 A. It was more difficult with a smaller port.

20 Q. Are you aware whether or not that resulted  
21 in the change in the size of the window as a result  
22 of the Molina incident?

23 A. It was.

24 Q. And on the same exhibit, I'm going to go  
25 ahead and circle two items on there. What are

1 those?

2 A. Cameras.

3 Q. And do you recall on March 7, 2014,  
4 whether all three cameras were working?

5 A. I was always told they were all working at  
6 all times, but I didn't know if any were down or  
7 not.

8 Q. And so, for example, you've seen two  
9 angles that were shown to you in court. Have you  
10 seen the third?

11 A. No.

12 Q. This is Exhibit E10. When the Molina  
13 assault was happening, do you see the blue door in  
14 the picture?

15 A. Yes, sir.

16 Q. On which side of the door were you?

17 A. I was on the other side of that door.

18 Q. You mentioned the small window. Do you  
19 see it there?

20 A. Yes, sir.

21 Q. So that window, you mentioned it was  
22 somewhat hard to see because of the size?

23 A. Yes.

24 Q. And where was Mr. Molina?

25 A. He was up against the window.

1 Q. On the inside? I was going to put a  
2 circle here by the wall. Was he on that side of the  
3 door?

4 A. Yes.

5 Q. Turning your attention to Defendants'  
6 Exhibit E17, I'm not sure if you can see that with  
7 the glare. Can you see it okay?

8 A. I can see it pretty decent.

9 Q. That seems like an easier picture to see.  
10 Can you see that better?

11 A. Yes.

12 Q. I'm going to circle on E17 a door in that  
13 picture. Can you see something underneath that  
14 door?

15 A. You can see a shadow under there on the  
16 right.

17 Q. You mentioned earlier that there is a gap.

18 A. Yes.

19 Q. Can you see the gap from that picture?

20 A. Yes.

21 Q. And from your experience, either roving or  
22 maybe even when you're in the bubble, have you seen  
23 inmates at this door?

24 A. Yes.

25 Q. What have you seen inmates doing at that

1 door?

2 A. They're talking, they're passing kites,  
3 and they also fish underneath that door.

4 Q. This is blue pod. Which pod is on the  
5 other side of blue pod?

6 A. Yellow pod.

7 Q. Do you recall if Carlos Herrera was in  
8 yellow pod during this time period?

9 A. I honestly can't remember.

10 Q. And you were questioned earlier, obviously  
11 there is no window on this door; correct?

12 A. No, sir.

13 Q. Now defendant Sanchez's attorney asked you  
14 about the inventory forms and you said you're  
15 supposed to, when it comes to doing the inventory.  
16 Do you know if that always happens?

17 A. It does not always happen.

18 Q. Why is that, if you know?

19 A. A lot of the time, like a big incident,  
20 like a murder, you don't have the time to do it  
21 proper.

22 Q. And what about when there is a transport  
23 going on and people are in a hurry to get inmates  
24 moved from one facility to the other?

25 A. Usually we already know about the



1 transports ahead of time, so we have lots of time to  
2 get all that done.

3 Q. What about a transport that's leaving the  
4 facility?

5 A. Usually we know when it happens, unless  
6 it's an emergency transport; then it doesn't get  
7 done.

8 Q. Now regarding the legal paperwork, earlier  
9 you made a gesture of having a handful of documents,  
10 and you made a gesture like you were thumbing  
11 through it; is that correct?

12 A. Yes.

13 Q. So if you're not allowed to read the  
14 documents, how do you know if there are other  
15 documents inserted in the legal documents?

16 A. We don't.

17 Q. If we don't need the exhibit, I won't put  
18 it up, but what time was rec?

19 A. Which pod? Every pod was at a different  
20 time. But I believe blue pod was 2:00 to 3:00 or  
21 are 2:30 to 3:30 that date. I'm not 100% positive  
22 on the time.

23 Q. So your recollection right now is during  
24 that time period, recreation for blue pod was about  
25 2:00 to 3:00 p.m.?

1 A. Yes, sir.

2 MR. CASTELLANO: If I can, can I have  
3 Exhibit 11, please?

4 And for the record this is the exhibit  
5 that has channel 5 currently displayed in the upper  
6 left-hand side?

7 Q. Okay. From this view, are you able to see  
8 what you call the inner pod door?

9 A. No, sir.

10 Q. And if we can get the next channel -- I  
11 think it's 4 -- I'm now showing you Government's  
12 Exhibit 11. It's the other video and it has channel  
13 or CH 04 in the upper left-hand corner. Same  
14 question. Can you see the inner pod door from that  
15 view?

16 A. No.

17 Q. And have you seen any other video showing  
18 the third view from the third camera?

19 A. No.

20 Q. I'm going to draw your attention to  
21 Exhibit 162. Now, this exhibit, I think it's pretty  
22 obvious now, but I'm going to go ahead and draw on  
23 the screen. In between the pods where you have the  
24 day rooms, there is a dotted line. And on two parts  
25 of the exhibit, I've basically drawn a red line. Do

1 those dotted lines reflect the walls between the  
2 pods?

3 A. Yes.

4 Q. And then can you see where it says inner  
5 pod door on -- I'm going to go ahead and indicate  
6 here --

7 A. Yes, I can.

8 Q. -- with an arrow. Is that the same inner  
9 pod door I was asking you about earlier that showed  
10 a gap underneath the door?

11 A. Yes.

12 Q. So if somebody wanted to get something  
13 from -- I'll put a B here, that would be the pod  
14 furthest south on the diagram; yellow pod was next;  
15 is that correct?

16 A. Yes.

17 Q. That would be farthest west of the pods,  
18 and green pod is farthest north; correct?

19 A. Yes.

20 Q. Would it be possible from your experience  
21 that a note could travel as far as blue pod through  
22 the inner pod doors and into green pod even through  
23 the doors?

24 A. Yes.

25 MR. CASTELLANO: I pass the witness, Your

1 Honor.

2 THE COURT: Thank you Mr. Castellano. It  
3 looks like, Mr. Price, you may step down.

4 MS. JACKS: Your Honor, I have just a few  
5 follow-ups questions.

6 THE COURT: Go ahead, Ms. Jacks.

7 RECROSS-EXAMINATION

8 BY MS. JACKS:

9 Q. You're almost ready to step down. Officer  
10 Price, I just want to ask you a couple of questions  
11 in follow-up on what Mr. Castellano just told you.

12 MS. JACKS: Can I have that EM?

13 Q. I'm just putting the diagram back up, EM,  
14 the one that we marked earlier. So we saw pictures  
15 from inside blue pod. But do yellow pod and green  
16 pod -- are they set up basically the same?

17 A. They're basically set up basically the  
18 same way.

19 Q. Just different colors?

20 A. Just different colors, and TV and  
21 microwave might be in a different location.

22 Q. And do yellow pod and green pod also have  
23 security cameras?

24 A. Yes.

25 Q. And those security cameras also record;

1 right?

2 A. They're supposed to, yes.

3 Q. So the inner pod doors, the upper and  
4 lower that are between blue pod and yellow pod, are  
5 there cameras -- if they're working, is there a  
6 camera in blue pod that captures that inner pod  
7 door?

8 A. Yes.

9 Q. Is there also a security camera in yellow  
10 pod --

11 A. Yes.

12 Q. -- that captures that inner pod door?

13 A. Yes.

14 Q. And have you seen any video from yellow  
15 pod for the date of March 7, 2014?

16 A. No.

17 MS. JACKS: Thank you. I have nothing  
18 further.

19 THE COURT: Thank you, Ms. Jacks.

20 Mr. Maynard?

21 MR. MAYNARD: Just a couple of questions,  
22 Your Honor.

23 THE COURT: You may.

24

25

1 RECROSS-EXAMINATION

2 BY MR. MAYNARD:

3 Q. Mr. Price, when people -- when inmates are  
4 transferred in from another facility or when they  
5 arrive at another facility, are they held separately  
6 and isolated from the general population of their  
7 pod?

8 A. Like when they first arrive?

9 Q. When they first arrive?

10 A. Probably about an hour, and then they're  
11 sent to their housing unit.

12 Q. When they're in their housing unit, are  
13 they held in any separate status, if you know?

14 A. They're on orientation status and they're  
15 locked in their cells.

16 Q. How about -- do they have shower  
17 privileges during that timeframe?

18 A. Yes, they do. They're supposed to get a  
19 shower a day.

20 Q. One a day. And they're out without any  
21 escort? They're out in the general population just  
22 for the shower?

23 A. No, all the other inmates are locked down  
24 while they're out.

25 Q. While they're out. So that person might

1 be in the shower; everyone else is locked in?

2 A. Yes.

3 Q. And that orientation status lasts for how  
4 many days?

5 A. Approximately seven days.

6 Q. Seven days?

7 MR. MAYNARD: Thank you.

8 THE COURT: Thank you, Mr. Maynard.

9 Mr. Castellano, anything further?

10 MR. CASTELLANO: No, Your Honor.

11 THE COURT: All right. Mr. Price, you may  
12 step down.

13 Is there any reason that Mr. Price cannot  
14 be excused from the proceedings?

15 MR. CASTELLANO: No, Your Honor.

16 MR. VILLA: Your Honor, we'd like him  
17 subject to defense recall. He doesn't need to stay  
18 at the courthouse.

19 THE COURT: You're free to leave the  
20 courthouse, but you're subject to recall, so you  
21 can't enter the courtroom. Thank you, Mr. Price.  
22 Thank you for your testimony.

23 All right. Mr. Beck, does the Government  
24 have its next witness or evidence?

25 MR. BECK: Your Honor, the United States

1 calls David Calbert. And may we approach?

2 THE COURT: You may.

3 (The following proceedings were held at  
4 the bench.)

5 MR. BECK: Your Honor, I just want to make  
6 sure that I'm clear on the Court's ruling. I  
7 understand the Court's ruling to allow in Mr.  
8 Calbert's discussion with Cheech.

9 THE COURT: Is that Martinez?

10 MR. BECK: Yes.

11 THE COURT: What's his first name? I've  
12 been calling him T. Martinez in my opinions.

13 MR. BECK: Joe T. Martinez is one of our  
14 other witnesses.

15 THE COURT: So where Joe Martinez tells  
16 him, "Take this down there for Pup," what did he  
17 say?

18 MR. BECK: "Take this down there for Pup."

19 THE COURT: I think that's going to be a  
20 803-3 statement, but I think it's also a  
21 co-conspirator statement.

22 MS. FOX-YOUNG: To be clear, I think the  
23 T. Martinez we've been referring to is Tim Martinez.  
24 So this is a new co-conspirator we didn't hear about  
25 at the James --



1 MS. DUNCAN: Your Honor, we first got the  
2 statement on the 28th. We weren't aware before  
3 that, and there has been no evidence to suggest that  
4 this Martinez Cheech is a member of the conspiracy  
5 with Mr. Baca. So I don't think it is a  
6 co-conspirator statement, so we object both that  
7 it's hearsay and late notice.

8 THE COURT: What are you going to do to  
9 establish -- what is his name? Joe Martinez?

10 MR. BECK: Yes.

11 THE COURT: What are you going to do to  
12 establish him as a co-conspirator?

13 MR. BECK: I think the facts that would  
14 establish he's a co-conspirator is that he passed  
15 the paperwork from Pup to David Calbert. And so --

16 THE COURT: He's the messenger.

17 MR. BECK: Right. So the paperwork has to  
18 exist.

19 THE COURT: Is he going to be able to  
20 testify that he knew what he was carrying down  
21 there?

22 MR. BECK: Yes.

23 THE COURT: He knew what the object of the  
24 conspiracy was, or the object of the paperwork, what  
25 it contained, that sort of stuff?

1 MR. BECK: Yes. He read it.

2 MS. DUNCAN: Your Honor, the only evidence  
3 that they have that Joe Martinez had this  
4 conversation with Anthony is from David Calbert  
5 saying that he said so. There is no independent  
6 evidence that suggests -- they're not calling Joe  
7 Martinez. He's on a backup list.

8 THE COURT: If Calbert gets -- how are you  
9 going to -- how are you going to establish Martinez  
10 read the materials and knew those?

11 MR. BECK: Well, because Martinez said,  
12 "Pup wants this done. Pup wants to get it done."  
13 He knows what the paperwork contains. There is no  
14 other reason.

15 THE COURT: Other than the  
16 co-conspirator's statements that Martinez -- that  
17 Calbert is going to say that Martinez told him, is  
18 there any other evidence to establish or confirm  
19 that Martinez, Joe Martinez, was part of the  
20 conspiracy?

21 MR. BECK: I think Mr. Calbert will  
22 testify that he knew that Joe Martinez and Mr. Baca  
23 were close; that they talked. But outside of that,  
24 it's just the paperwork.

25 THE COURT: And Joe Martinez is not going

1 to testify in the trial?

2 MR. BECK: He's not. At this point he's  
3 not.

4 MS. DUNCAN: Your Honor, I'd like to note  
5 for the record that David Calbert had not met Mr.  
6 Baca, so any information he had that Mr. Martinez  
7 and Mr. Baca were close is hearsay and outside of  
8 personal experience.

9 THE COURT: Well, if he knows they're  
10 close, that could come from a number of sources,  
11 couldn't it? He could observe them or know them  
12 from the organization.

13 MS. DUNCAN: He'd never met Mr. Baca or  
14 spent time around Mr. Baca. There is no evidence.  
15 He had to get it from someone other than Mr. Baca  
16 and other than from personal observation. So that  
17 is really coming straight out of the mind of David  
18 Calbert and no one else.

19 THE COURT: Well, I mean, does he have a  
20 source other than just hearsay of him being close?

21 MR. BECK: I don't know.

22 THE COURT: I guess I'm concerned. I  
23 thought it was T. Martinez. I thought what -- I'm  
24 writing these opinions, I've gotten familiar with  
25 him. But this fellow I guess we didn't analyze at

1 the James hearing, did we?

2 MR. BECK: I don't think so.

3 MS. DUNCAN: No, we did not.

4 MR. BECK: This is -- so he knew that the  
5 paperwork came from Mr. Baca. I don't think we knew  
6 precisely how Mr. Calbert knew that until the last  
7 few days. That's why it was just disclosed, as Ms.  
8 Duncan said. So Mr. Calbert will say that when Mr.  
9 Martinez, Joe Martinez, handed him the paperwork, he  
10 said, "Pup wants you to take this down there."

11 And then Mr. Calbert looks at it and says,  
12 "What is this?"

13 And Mr. Martinez says, "Pup wants this  
14 done."

15 And so again, the paperwork has to be  
16 there for the conspiracy to be done. Passing the  
17 paperwork is involvement in the conspiracy, just  
18 like Mr. Herrera is involved in the conspiracy for  
19 passing the paperwork and authorizing the hit.

20 THE COURT: But I'm having to use -- I  
21 know I can use the hearsay statements to establish  
22 the conspiracy. But doesn't the law also require  
23 something more? It doesn't allow you to rely solely  
24 on the hearsay statement, does it?

25 MR. BECK: It requires independent proof.

1 I think that independent proof is Mr. Martinez  
2 passing the paperwork to him. There is no other  
3 reason to pass the paperwork and say, "Pup wants  
4 this done."

5 THE COURT: Independent conduct, you're  
6 saying.

7 MR. BECK: Right.

8 MS. DUNCAN: But Your Honor, there is a  
9 reason to do it that way that has nothing to do with  
10 the conspiracy. He independently wanted Molina hit.  
11 And saying that Anthony Baca ordered it is a way for  
12 him to facilitate it. There is no evidence there is  
13 an agreement between Mr. Baca and Mr. Martinez  
14 outside of Mr. Calbert saying it.

15 THE COURT: But I don't think we have to  
16 require that much of the proponent to get in the  
17 evidence. It has to be something about they were  
18 handing paperwork to him, and Calbert can confirm  
19 all that, because he looked at it.

20 MS. DUNCAN: I mean, he can testify that  
21 he got paperwork from Mr. Martinez, and we dispute  
22 that. And I'd also note to the Court that  
23 Mr. Martinez is on the Government's witness list,  
24 and they've interviewed and have access to him. The  
25 problem is: We have a bunch of people talking about

1 the paperwork from Pup and they have no evidence  
2 other than hearsay and rumor. And all they have is  
3 David Calbert's testimony to show the conspiracy,  
4 and it's not enough, particularly given we just got  
5 notice of this this week, so --

6 MR. BECK: I think the additional witness  
7 we'll have is that Mr. Urquizo, when he testifies,  
8 will testify that before this time he did speak with  
9 Mr. Baca, and Mr. Baca told him he wanted him to get  
10 the paperwork to make sure Molina got hit. So we  
11 have Mr. Urquizo's direct talk with Pup that Pup was  
12 going to make sure that when Urquizo went down to  
13 Southern New Mexico, to Southern New Mexico, that  
14 Molina was going to be hit.

15 THE COURT: I think there is enough  
16 additional evidence besides just relying on the  
17 statements themselves. So I'm inclined to allow it.  
18 Give me a second or two to think about it. So  
19 before you actually ask the questions related to  
20 this 302, approach me again. But I'm inclined to  
21 think there is enough evidence in addition to the  
22 statements themselves to make Joe Martinez a  
23 co-conspirator.

24 MR. LOWRY: Your Honor, may I make a  
25 comment?

1 THE COURT: Let me let Ms. Fox-Young.  
2 Then I'll come back to you.

3 MS. FOX-YOUNG: Thank you, Your Honor.  
4 Mr. Perez joins the objection. I would just say  
5 it's improper for the Court to rely on the  
6 assertions of counsel, and this is why we had the  
7 James hearing, and the Court has not heard any of  
8 this evidence from Urquizo.

9 THE COURT: I'm about to hear it.

10 MS. FOX-YOUNG: The Lupe Urquizo that Mr.  
11 Beck says next --

12 THE COURT: I'm a little reluctant to rely  
13 on it, but it may give me enough additional comfort  
14 to allow it and find by a preponderance of the  
15 evidence that Joe Martinez is a co-conspirator.

16 MS. FOX-YOUNG: Further, Your Honor, the  
17 statement is made in furtherance. I don't think  
18 there is enough there. Mr. Perez objects.

19 THE COURT: I don't think it's a hard one  
20 to say it's in furtherance. I mean, I'm in the  
21 middle of passing these statements out. I have sort  
22 of a template.

23 MS. FOX-YOUNG: I don't think there is a  
24 temporal problem. But not having heard from Mr.  
25 Martinez -- and again, I think there isn't any

1 evidence outside of the statement itself. I just  
2 don't.

3 THE COURT: Well, passing the note, I do  
4 think we've got some action here. There is no  
5 statement, but they are passing the note, and  
6 Calbert is going to be able to say what the note  
7 said.

8 MS. FOX-YOUNG: The other danger is,  
9 you're doing this in front of the jury. This has  
10 not been done in a James hearing. We don't know  
11 what Calbert is going to say, so there may not be  
12 enough there.

13 THE COURT: I'm not sure what he's going  
14 to tell Mr. Beck. Reapproach and let me think about  
15 it.

16 MR. LOWRY: While you're thinking, Your  
17 Honor, I just wanted to point out while I don't  
18 disagree with Mr. Beck's representation, the problem  
19 with the Lupe Urquizo statement is really  
20 bootstrapping David Calbert's statement -- the  
21 allegation that David Calbert gets to Level 5 and  
22 hands Lupe Urquizo the paperwork. And so it doesn't  
23 really add anything to the conspiracy analysis  
24 because he's just parroting the same. And so like  
25 Ms. Duncan said, you're just using Mr. Baca's name



1 for your own independent reasons.

2 THE COURT: I'm a little reluctant to rest  
3 it on whether Urquizo is going to say it, but I do  
4 think that Mr. Martinez and Mr. Calbert together  
5 here are going to be able to provide enough and  
6 maybe Urquizo just gives a little bit more going to  
7 the --

8 MS. JACKS: For the record, Mr. Sanchez  
9 joins in the objections.

10 THE COURT: You join, as well?

11 MS. BHALLA: Yes, Your Honor, I do. And  
12 just briefly I think part of the problem defense  
13 counsel is having -- it's really impossible for us  
14 to figure out whether or not these independent  
15 assertions are supported by other evidence because  
16 of the late disclosures. And that's an ongoing and  
17 repeated problem we're dealing with. So I just want  
18 to make sure that we note that.

19 THE COURT: All right. You may approach.

20 MR. BECK: The second thing is if the  
21 Court is going to allow Mr. Perez' admission to Mr.  
22 Calbert in Estancia to come in, Mr. Perez tells  
23 him --

24 THE COURT: Yes, yes. I'll have to give a  
25 limiting instruction on that.

1 MS. FOX-YOUNG: Can I make a statement on  
2 that? Again, this is the August 2017 interview for  
3 which the 302 was turned over January 12. This is  
4 clearly Rule 16 as specifically denoted in the rule.  
5 This is a statement of the defendant. There is no  
6 reason why it wasn't turned over. The Government's  
7 sandbagging, giving this to us two weeks before  
8 trial in a raft of thousands of pages of documents,  
9 and the Court shouldn't allow it.

10 MR. BECK: This isn't a Rule 16 statement  
11 since it was Mr. Perez' statement to Mr. Calbert.  
12 It's not a statement given to a known law  
13 enforcement agent. So it's not clearly a Rule 16  
14 statement of the defendant.

15 THE COURT: Well, when did you have --  
16 when did you have this statement?

17 MR. BECK: In Estancia, when we first --

18 MS. FOX-YOUNG: August 22, 2017.

19 THE COURT: This was turned over as part  
20 of the Jencks material?

21 MS. FOX-YOUNG: January 12.

22 THE COURT: I guess I'm thinking this is  
23 just classic Jencks material rather than any  
24 Giglio-Brady material.

25 MS. FOX-YOUNG: Your Honor, I'm not

1 arguing that it's Giglio-Brady. There is  
2 Giglio-Brady in that disclosure.

3 THE COURT: It's a Rule 16.

4 MS. FOX-YOUNG: It's a statement of  
5 Mr. Perez. It's Rule 16, and they sat on it, and we  
6 have no time to investigate it, to suss it out, and,  
7 you know, I think the Court ought to sanction the  
8 Government for a discovery violation and shouldn't  
9 allow that statement.

10 THE COURT: Why wasn't this one turned  
11 over earlier?

12 MR. BECK: I believe that the United  
13 States held back Mr. Urquizo's debrief when he  
14 cooperated, as a Jencks statement, so it was turned  
15 over.

16 MS. FOX-YOUNG: This is Calbert.

17 MR. BECK: Did I say Urquizo?

18 MS. FOX-YOUNG: Your Honor, Rule 16  
19 contains no such language about limiting statements  
20 to those given to Government agents. 16(a)(1)(A).  
21 Upon a defendant's request the Government must  
22 disclose to the defendant the substance of any oral  
23 statement by the defendant before or after arrest,  
24 and then goes on to B) defendant's written statement  
25 which includes all statements. So the language that

1 Mr. Beck is referring to is in (A). It's the  
2 statement of the defendant.

3 MR. BECK: I think it's also included in  
4 (B).

5 MS. FOX-YOUNG: And in fact, Mr. Calbert  
6 was acting as a Government agent. I think that's  
7 clear.

8 MR. BECK: Not at the time that Mr. Perez  
9 gave the statement to Mr. Calbert.

10 MS. FOX-YOUNG: I'd like to voir dire him  
11 on that. It's unclear from the report. But --

12 MR. BECK: Rule 16 addresses statements  
13 given to known -- interrogation by a person known to  
14 the defendant as a Government agent. So it is known  
15 to the person as a Government agent. That's what's  
16 covered in a Rule 16 statement.

17 MS. FOX-YOUNG: 16(B) says the Government  
18 must disclose any relevant written or recorded  
19 statement by the defendant if it's within the  
20 Government's custody or control if the Government is  
21 arguing this isn't recorded.

22 THE COURT: Are you looking at 16?

23 MS. FOX-YOUNG: 16(a)(1)(B).

24 MR. BECK: I think part 2 of 16(a)(1)(B)  
25 refers to the Government agent -- interrogation by a

1 Government agent.

2 THE COURT: It sure looks like it's more  
3 of a 302 situation where the defendant writes  
4 something out or records something rather than  
5 another person reporting it as part of their 302.

6 MR. BECK: That's the Government's  
7 position, Your Honor.

8 THE COURT: Do you have any law to support  
9 that?

10 MR. BECK: Not handy. Just my reading of  
11 the rule.

12 THE COURT: Well, I don't think I'm going  
13 to exclude that portion of it under Rule 16. It has  
14 been in your possession since January 12, so it came  
15 out of the Jencks material. I'm not sure there is  
16 much you can do with it other than it's not a good  
17 statement for you. But I'm not sure that whether it  
18 was disclosed or on January 12 would have made any  
19 difference.

20 MS. FOX-YOUNG: There are a number of  
21 things we would have done. I won't keep the Court,  
22 but we've received thousands and thousands of pages  
23 over the last few weeks. We were able to identify  
24 the statement with no time to run it down. This is  
25 deliberate late disclosure on the Government's part.

1 There is no question about that, and on the eve of  
2 trial.

3 THE COURT: Unless it's clear as part of a  
4 Jencks production rather than a statement to a  
5 Government agent. If you've got some law on it, I'd  
6 be glad to take a look at it. But looking at the  
7 rule, it's primarily talking about 302s or  
8 recordings or written statements.

9 MS. FOX-YOUNG: Given that it's late in  
10 the date and given that we're trying to run this  
11 down, would you allow us the weekend? I don't know  
12 if the Government intends to continue with Mr.  
13 Calbert today, but we would like to look at the law  
14 and brief the Court. I can't find law in the next  
15 10 minutes, but I'd like to alert the Court if there  
16 is some authority.

17 THE COURT: Well, take a look at it. Do  
18 the best you can to see what it is, but I guess I'm  
19 just not seeing the prejudice here.

20 MS. BHALLA: Could I add something? The  
21 prejudice in terms of what's going on with all of  
22 this in addition to -- about the same time or after  
23 we got this Jencks disclosure, we got this STIU  
24 report where Captain Sapient and I believe it was  
25 Chris Cupit interviewed people about what happened

1 and it was redacted. And part of that redacted CI  
2 information was that it wasn't Calbert who brought  
3 the paperwork down. It was somebody else. And it  
4 was a whole different theory of how the paperwork  
5 came down, who brought paperwork, and what happened  
6 when the paperwork arrived. And this is why we're  
7 prejudiced by the delay. There is other exculpatory  
8 information that gets disclosed at the same time, or  
9 after the Jencks material gets disclosed, and we  
10 don't have time to go run down the leads to get the  
11 impeachment witnesses to go track down the other  
12 witnesses to flush out the stories, because we're  
13 trying to deal with the discovery that's getting  
14 dumped on us in the middle of trial. And that's  
15 prejudicial, Your Honor.

16 THE COURT: Well, that's the way Jencks  
17 works, and that's the way ongoing discovery with new  
18 302s goes.

19 MS. DUNCAN: I think the other issue, Your  
20 Honor, that's prejudicial is that there are so many  
21 informants in this case. In preparing for trial  
22 we've identified this informant is related to my  
23 client. This is my focus with this latest discovery  
24 dump. I think this happened to Team Perez. You  
25 don't think -- David Calbert has nothing to do with

1 me, so I'm focusing on Billy Cordova, and suddenly  
2 that is a huge witness. We're not having time to  
3 get up to speed on these witnesses who we didn't  
4 know were relevant to our clients. You're right.  
5 Here, it's entire categories of witnesses who are  
6 suddenly relevant for the first time before trial,  
7 and we're scrambling.

8 THE COURT: I'm inclined to allow the  
9 statement based on my reading of Rule 16. I'm not  
10 sure if there is any violation there. It was  
11 available to the defendant on January 12, so the  
12 statement has been out there for a while. And  
13 also -- I'll give it some thought, but I think there  
14 is enough to let in the statements of Joe Martinez.  
15 But approach me before it starts.

16 MS. FOX-YOUNG: Your Honor, real briefly,  
17 as you're giving some thought on the question of  
18 Rule 16, I think the 302 is clearly a written  
19 statement and should be considered by the Court  
20 as -- I don't have the rule in front of me, but I  
21 think it's section B of the rule. It's not as if  
22 this witness is coming, and I don't have the  
23 opportunity right now to find the Court any  
24 authority. If the Court will delay the testimony on  
25 this statement, we can do that. It's not as if this



1 witness is just going to come into court and blurt  
2 this out. This was contemplated; an interview was  
3 done in August of 2017. This prosecution team made  
4 a written statement, a 302, that includes the  
5 defendant's statement. And I think it clearly falls  
6 within the rule as written, 302, and I can see if  
7 there is any law.

8 MS. JACKS: For the record, Defendant  
9 Sanchez objects and asks for a limiting instruction.

10 THE COURT: All right. I'll have to make  
11 that limiting instruction.

12 (The following proceedings were held in  
13 open court.)

14 THE COURT: All right, Mr. Beck.

15 MR. BECK: The United States calls David  
16 Calbert, Your Honor.

17 THE COURT: All right, Mr. Calbert. If  
18 you'll come up to the witness box, and before you're  
19 seated, Ms. Standridge will swear you in. So if  
20 you'll raise your right hand to the best of your  
21 ability there, Ms. Standridge will swear you in.

1                   DAVID CALBERT,  
2           after having been first duly sworn under oath,  
3           was questioned, and testified as follows:

4                   THE CLERK: Please be seated, and state  
5   and spell your name for the record.

6                   THE WITNESS: David Calbert.

7                   THE COURT: Mr. Calbert. Mr. Beck.

8                   DIRECT EXAMINATION

9   BY MR. BECK:

10           Q. Mr. Calbert, do you go by any other name?

11           A. Spider.

12           Q. When were you brought into the SNM Gang?

13           A. It would have been about '98.

14           Q. Where were you?

15           A. In Hobbs.

16           Q. How did you come to join the SNM?

17           A. I was just asked to, and I ended up  
18 hanging around with these guys and got in by  
19 stabbing some enemy for the S to get in.

20           Q. Is that when you -- or how you earned your  
21 bones?

22           A. Yes.

23           Q. Was that an SNM stabbing?

24           A. Yes.

25           Q. Why?

1           A.     Because he was a rival to the S. There  
2 was a little warrant for the white guys. He ended  
3 up going up to Hobbs, and we got him for that.

4           Q.     And I think you said you stabbed him?

5           A.     Yes.

6           Q.     What did you stab him with?

7           A.     A shank, a piece of metal from the mop  
8 broom.

9           Q.     From the what?

10          A.     The mop broom. A piece of metal.

11          Q.     Where did you keep that piece of metal?

12          A.     In my room, inside my mattress.

13          Q.     Did anyone help you with the assault?

14          A.     Yes. I don't know his full name. They  
15 called him Utah.

16          Q.     Was that because it was an SNM assault?

17          A.     Yes.

18          Q.     I want to show you a couple of photo, Mr.  
19 Calbert.

20                   MR. BECK: Can we bring up what's been  
21 admitted as Exhibit 636?

22          Q.     Is that you, Mr. Calbert?

23          A.     Yes.

24          Q.     Look at 637. Is that you with your  
25 tattoos, Mr. Calbert?

1 A. Yes.

2 Q. Have you gotten tattoos since then?

3 A. Yes.

4 Q. Where did you get those tattoos?

5 A. On my chest, my arms.

6 Q. Where were you located when you got those  
7 tattoos on your chest and your arms?

8 A. In Estancia.

9 Q. Is it allowed to get tattoos in Estancia?  
10 Are you allowed to do that?

11 A. No.

12 MR. BECK: Will you bring up Exhibit 638,  
13 please?

14 Q. What's that tattoo on your neck?

15 A. It's a Zia with an S in it.

16 Q. What does that mean?

17 A. It means I'm part of the syndicate, SNM.

18 Q. Is that the Sindicato de Nuevo Mexico?

19 A. Yes.

20 Q. What about on your chin in that picture?

21 A. That's an S also.

22 Q. Does that also stand for the SNM?

23 A. Yes.

24 Q. And Exhibit 640, please. Is that the same  
25 S tattoo on your neck?

1 A. Yes.

2 Q. Is that a spider web with a spider on your  
3 neck next to it?

4 A. Yes.

5 THE COURT: Mr. Beck, I know we just got  
6 started with Mr. Calbert. But would this be a good  
7 place for us to take our afternoon break?

8 MR. BECK: It would, Your Honor.

9 THE COURT: All right. We'll be in recess  
10 for about 15 minutes. All rise.

11 (The jury left the courtroom.)

12 THE COURT: All right. We'll be in recess  
13 for about 15 minutes.

14 (The Court stood in recess.)

15 THE COURT: All right. We'll go on the  
16 record. I don't think they're Rule 16 statements.  
17 So I just don't think it's going to fall within 16  
18 or 16-B. So I don't think it's a Rule 16 problem.  
19 But I do want to have -- outside the presence of the  
20 jury, I can rely on inadmissible hearsay to  
21 determine whether Mr. Joe Martinez is a  
22 co-conspirator here, and so I think I'd rather hear  
23 that outside the presence of the jury.

24 So the points I think I'm going to be  
25 looking for is: Is he close, and how he knows that.

1 I can rely on inadmissible hearsay for that.

2 And I can also -- I think it's a closer  
3 call -- if you were to ask in front of the presence  
4 of the jury, I'd have to think through whether if he  
5 read the materials and knew what was in the  
6 materials whether those would be in furtherance of  
7 the conspiracy or not. I think certainly him  
8 bringing the paperwork is, but those additional  
9 statements might not be co-conspirator statements.  
10 And I'm not sure I see any other hearsay exception.

11 So I think I can rely on those to  
12 determine whether he's a conspirator, but I think I  
13 better hear that testimony outside the presence. So  
14 if you want to ask --

15 MR. BECK: Sure. I think the latter  
16 statement, after -- I think the latter statement may  
17 also be an excited utterance. But we will get  
18 there.

19 THE COURT: You're talking about when he  
20 says, "This is nothing," that part?

21 MR. BECK: That statement, and then the  
22 response that "Pup wants it done."

23 THE COURT: But this is nothing -- well,  
24 those are Mr. Calbert's statements. He's here.

25 MR. BECK: "What is this? This is

1 nothing," are Mr. Calbert's statements, which I  
2 think may be excited utterances or present sense  
3 impressions. Then --

4 THE COURT: I think present sense.

5 MR. BECK: Right. And Mr. Martinez'  
6 response, "Pup wants this done," I think may be an  
7 excited utterance because he gets the impression  
8 that Mr. Calbert is not going to take down the  
9 paperwork, or doesn't want to follow through with  
10 it.

11 THE COURT: I'm not quite persuaded by  
12 that, but I'll think about it. Why don't you go  
13 ahead and ask Mr. Calbert the questions.

14 Mr. Calbert, I'll remind you you're still  
15 under oath.

16 Mr. Beck.

17 BY MR. BECK:

18 Q. Mr. Calbert, the paperwork is important in  
19 an SNM-validated hit; is that right?

20 A. Yes.

21 Q. And you agreed to participate or help with  
22 the Molina murder by taking the Molina paperwork  
23 from the North facility to the South facility; is  
24 that right?

25 A. Yes.

1 MS. DUNCAN: Your Honor, I'd ask that the  
2 Court instruct Mr. Beck not to lead the witness.

3 MR. BECK: I won't lead, Your Honor.

4 THE COURT: All right.

5 BY MR. BECK:

6 Q. Did you read the paperwork?

7 A. Yes.

8 Q. What was it?

9 A. It was just saying that he had called on  
10 something, on a robbery or -- I don't remember  
11 exactly what it was. But it was somewhere along  
12 them lines where he said who did what. And it's  
13 been a while. I don't remember.

14 Q. All right. And you didn't think it was  
15 very significant or --

16 A. Yeah.

17 Q. Did you think it was significant?

18 A. No, it wasn't very significant.

19 Q. Is that statement to law enforcement -- is  
20 that still ratting or snitching?

21 A. Yes.

22 Q. Who provided you the paperwork?

23 A. Cheech.

24 Q. Do you know his real name?

25 A. I don't know his real name. I just know



1 him by Cheech.

2 Q. And does he know the defendant Anthony Ray  
3 Baca?

4 A. Yes, he told me he did.

5 Q. Does he know him well?

6 A. He says he does.

7 Q. Did he say if they interacted with each  
8 other?

9 A. Yes. At that point he had told me that he  
10 wanted me to send -- that Pup wanted me to send that  
11 down, down South, carry it with me, so...

12 Q. And by giving you the paperwork from Pup,  
13 was Cheech also agreeing and participating to  
14 further the Molina murder?

15 A. Yes.

16 Q. And why is that?

17 A. Because he's making sure that I'm going to  
18 take it.

19 Q. And when you said, "This is nothing," what  
20 did he say in response to you?

21 A. That's when he used Pup's name. He told  
22 me he wanted me to do that.

23 Q. Do you know anything else about how close  
24 Cheech and Pup are?

25 A. No. No.

1 Q. You didn't learn anything after this about  
2 how close they are?

3 A. I knew they talked on the phone.

4 Q. How often?

5 A. I'm not sure. I knew from the computer.

6 Q. The tablet?

7 A. The tablet. Yeah. Now, I know.

8 Q. You heard Cheech and Pup talking on  
9 recorded statements on the tablets?

10 A. Yes.

11 MR. BECK: I think that's probably --

12 THE COURT: Why don't you maybe inquire --  
13 one of the things you said up here at the bench was  
14 you might -- that Joe Martinez may have said some  
15 things about he had read the paperwork and knew what  
16 the contents were and those things himself.

17 BY MR. BECK:

18 Q. Do you know whether Cheech read the  
19 paperwork and knew the contents of it?

20 A. He didn't tell me he did, but I'm pretty  
21 sure, you know.

22 Q. Why is that?

23 A. Because he told me what it was about,  
24 really. It was paperwork on Molina, and so I  
25 figured he read it.

1 Q. He told you it was paperwork on Molina?

2 A. Yes.

3 Q. What does "paperwork" mean?

4 A. It means him telling.

5 Q. So he basically told you what the document  
6 he was handing you is?

7 A. Yes. He didn't tell me word for word, but  
8 he told me that's what it was.

9 THE COURT: Anything further, Mr. Beck?

10 MR. BECK: That's all, Your Honor.

11 MS. FOX-YOUNG: Your Honor?

12 THE COURT: Let me have Ms. Duncan go  
13 first here.

14 CROSS-EXAMINATION

15 BY MS. DUNCAN:

16 Q. Mr. Calbert, at the time that you say that  
17 Cheech gave you the paperwork, you had never met Mr.  
18 Baca at that point; correct?

19 A. No.

20 Q. You'd never seen Mr. Baca interact with  
21 Cheech?

22 A. No.

23 Q. So the only thing that you know about the  
24 relationship between Cheech and Mr. Baca is from  
25 what Cheech told you; correct?

1 A. Yes.

2 Q. And then also from what you've reviewed in  
3 the discovery?

4 A. Yes.

5 Q. And how long have you had your tablet?

6 A. I'd say close to a year altogether,  
7 because they took it away for a while.

8 Q. And how much of the discovery on that  
9 tablet have you reviewed?

10 A. Well, most of it. Most -- my case, really  
11 you know, and some of the other cases.

12 Q. And when you say "my case," what are you  
13 referring to?

14 A. The Paul Silva case.

15 Q. How about the Javier Molina case?

16 A. No, not too much, but I have.

17 Q. You reviewed a call between Cheech and Mr.  
18 Baca; correct?

19 A. Yes.

20 MS. DUNCAN: I have no further questions,  
21 Your Honor.

22 THE COURT: How about you, Ms. Fox-Young?

23 Thank you, Ms. Duncan.

24 MS. FOX-YOUNG: Your Honor, I do, but it's  
25 on the other issue. Just very briefly, I'd ask at

1 the bench if I could voir dire on that issue, on Mr.  
2 Perez' statement? Just on the time. It's two  
3 questions.

4 THE COURT: Just refresh my memory. What  
5 do you want to do?

6 MS. FOX-YOUNG: I just want to ask him  
7 about the timing of the statement with respect to  
8 the Rule 16 question.

9 THE COURT: Okay. I don't remember the  
10 issue, but go ahead.

11 CROSS-EXAMINATION

12 BY MS. FOX-YOUNG:

13 Q. Mr. Calbert, when did you receive a  
14 Kastigar letter from the Government?

15 A. A what?

16 Q. The Kastigar letter. Do you know what  
17 that is?

18 A. No.

19 Q. When did you first sit down with the  
20 Government and talk to them? Was that in the  
21 summer?

22 A. Oh, yeah. It was right after I left  
23 Estancia, right before Estancia closed down. I'm  
24 not sure what month it was.

25 Q. Okay. "Right before" -- how many days

1 before Estancia closed down?

2 A. I'd say a couple weeks, maybe.

3 Q. And then was it after that that you say  
4 Mr. Perez bragged to you about getting shanks for  
5 the Molina murder?

6 A. It was during that time there in Estancia.

7 Q. So if that happened, did -- are you saying  
8 that Mr. Perez bragged to you before you ever talked  
9 to the Government?

10 A. Yes.

11 MS. FOX-YOUNG: Okay. Thank you, Your  
12 Honor.

13 THE COURT: Thank you, Ms. Fox-Young.

14 Anybody else? Ms. Jacks? Mr. Maynard?  
15 Anybody else?

16 MS. JACKS: No, Your Honor.

17 THE COURT: Do you have anything further,  
18 Mr. Beck?

19 MR. BECK: Yes, Your Honor. I'll point  
20 out that also naming other members in the conspiracy  
21 is an act in furtherance of the conspiracy. So both  
22 Cheech naming Pup -- well, not both. I guess Cheech  
23 naming Pup is an act in furtherance of the  
24 conspiracy, as well.

25 THE COURT: Do you have any further

1 questions?

2 MR. BECK: No. Sorry, I do not.

3 THE COURT: Well, I think you have  
4 established by a preponderance of the evidence that  
5 Joe Martinez is part of the conspiracy, so I'll  
6 allow these statements.

7 All right, Ms. Standridge, do you want to  
8 bring the jury in?

9 While she's getting the jury, anybody got  
10 anything they need to say to me, want to say to me?  
11 Anything we need to cover?

12 MR. BECK: Getting out by 5:00?

13 THE COURT: No. Sorry. I told you early  
14 on, I have to say "No" a lot; right?

15 MR. BECK: I know. I thought I'd try.

16 MR. LOWRY: Do you have any extra  
17 Five-Hour Energy?

18 THE COURT: I haven't had one this week.  
19 Getting good rest. Do you rest better in a trial or  
20 before the trial?

21 MS. JACKS: After.

22 THE COURT: I start sleeping better during  
23 than I did before.

24 MR. JACK: That's because we tire you out.

25 THE COURT: Once you get in the ball game,

1 it starts getting...

2 MR. JEWKES: Your Honor, are we going to  
3 have a little voucher relief fairly soon? We have  
4 investigators and whatnot that are getting antsy.

5 MR. BECK: Vouchers?

6 MR. JEWKES: Vouchers. CJA vouchers.

7 THE COURT: I don't have a single one on  
8 my desk. I'll talk to you before we leave. The  
9 problem that I had is the Fed Ex I sent here  
10 yesterday has not arrived in Albuquerque. And I  
11 can't remember if it was Wednesday that was full of  
12 vouchers or yesterday. But the package I got today  
13 didn't have any. So every one I have is either in  
14 Albuquerque or en route. I don't have a single one.  
15 I sat up here and got them all paid. The problem  
16 was, I put the Fed Ex slip into today's package  
17 before I realized they had it. So I don't have a  
18 way to track. But at the worse, it's going to hit  
19 there Monday. K'Aun is out of town anyway. She's  
20 in Lubbock today and she's probably the one  
21 processing those. But I paid them all.

22 All right. All rise.

23 (The jury entered the courtroom.)

24 THE COURT: All right. Everyone be  
25 seated.



1           On that last point, Mr. Jewkes, they had a  
2           mechanical failure in El Paso with the plane, and so  
3           the packages are in Memphis.

4           MR. JEWKES: They always do, Your Honor.  
5           I have tracked down a Fed Ex package, a couple of  
6           them, from the Court back to Albuquerque.

7           THE COURT: All right, Mr. Calbert, I'll  
8           remind you that you are still under oath.

9           Mr. Beck, if you wish to continue your  
10          direct examination of Mr. Calbert, you may do so at  
11          this time.

12                           CONTINUED DIRECT EXAMINATION

13          BY MR. BECK:

14           Q.    Mr. Calbert, why were you in Hobbs in  
15          1998?

16           A.    That's where they sent me from RDC.

17           Q.    What's RDC?

18           A.    Like you go to a certain prison to, like,  
19          verify your points and all that stuff, where they  
20          want you to go, medium or minimum or whatever.

21           Q.    Okay. Do you know what those three  
22          letters stand for, RDC?

23           A.    No.

24           Q.    At RDC, it sounds like they decide which  
25          facility they're going to send you to?

1 A. Right.

2 Q. And they sent you to Hobbs?

3 A. Yes.

4 Q. What I meant by my question is: Why were  
5 you sent to prison in 1998?

6 A. Oh, okay. It's for a shooting on the  
7 street.

8 Q. What do you mean, a shooting on the  
9 street? What happened?

10 A. Just shooting from a motor vehicle.

11 Q. What were you shooting at?

12 A. Another person.

13 Q. So is that what I would think of as a  
14 drive-by shooting?

15 A. Yeah, I guess.

16 Q. Were you found guilty, or did you plead  
17 guilty to aggravated assault with a deadly weapon?

18 A. Yes, I pled.

19 Q. I want to talk about other crimes that  
20 you've done because it was expected of you as an SNM  
21 member. Did you assault or -- assault somebody in  
22 1998 or 1999?

23 A. Yes.

24 Q. Who was that?

25 A. Nick Olivas.

1 Q. And did you do that because or by virtue  
2 of your membership in the SNM?

3 A. Yes.

4 Q. Was that an SNM-ordered hit?

5 A. Yes.

6 Q. And what did you do to Nick Olivas?

7 A. Just beat him up real bad.

8 Q. How about in 2004? Did you do another SNM  
9 hit in 2004?

10 A. Yes.

11 Q. Who did you hit?

12 A. Bandit. I don't know his full name.

13 Q. Is that Bandit?

14 A. Yes.

15 Q. Sometimes you lean away from the  
16 microphone.

17 A. Okay. All right.

18 Q. Why was that an SNM hit?

19 A. Because he owed money.

20 Q. He owed money for what?

21 A. Drugs.

22 Q. He owed money to the SNM for drugs?

23 A. Yes. Yes.

24 Q. Is that why he was assaulted?

25 A. Yes.

1 Q. Did someone order you to assault him?

2 A. Arturo Garcia.

3 Q. Is Arturo Garcia an SNM member?

4 A. Yes.

5 Q. Now, I want to talk a little bit more  
6 about that hit. Where did it happen?

7 A. On that maximum security right there at  
8 the North.

9 Q. When you say "the North," is that the  
10 North facility at the Penitentiary of New Mexico?

11 A. Yes.

12 Q. In Santa Fe?

13 A. Yes.

14 Q. Is that what is sometimes referred to as  
15 the Level 6 facility?

16 A. Yes. Now it is, yes.

17 Q. And where did this happen at the North?

18 A. Right there in 3-B.

19 Q. 3-B -- is that the pod it was in?

20 A. Yeah, the unit. The unit.

21 Q. Did it happen there, or did it happen in  
22 the cages in the yard?

23 A. It happened on the way coming back from  
24 the yard.

25 Q. Tell me about that.

1           A.    I just was coming back. I had been  
2 looking for him for a few weeks. And I pulled my  
3 mirror off the wall and we went to the yard. We  
4 were in the yard, and he was coming -- we were  
5 coming back like that. And I got a little ahead of  
6 him and I knew he was coming out of the cage. I  
7 jumped my cuffs, was almost in the front door, and  
8 then I ran back to the yard and I pulled my knife  
9 around my neck with the string to my back so when  
10 they searched me and stuff, I can look like I don't  
11 got no clothes on, and then, like, turn around, I  
12 can swing it around. And that's how I had it. And  
13 I pulled it off and I ran back to the yard, and I  
14 caught him coming out of his cage, and I stabbed  
15 him.

16           Q.    There are a couple of things I wanted to  
17 go back to there. What did you make the shank out  
18 of?

19           A.    It was a piece of a stainless steel mirror  
20 that was on the wall.

21           Q.    And how did you -- let me ask this  
22 question. When you're taken out from the Level 6  
23 facility to the cages in the yard, are you searched?

24           A.    Yes.

25           Q.    Who searches you?

1 A. The COs.

2 Q. And how do they search you?

3 A. They strip search you, take all your  
4 clothes, and turn around, and squat and cough, and  
5 all that.

6 Q. So how did you hide a piece of your metal  
7 mirror when they were having you turn around and  
8 squat and cough?

9 A. I had a piece of string around my neck. I  
10 just tied it to it and held on the back. It was  
11 kind of heavy, so I could -- when they told me to  
12 turn and squat and cough, kind of used the weight of  
13 it. I turned around and put it to the front, and  
14 squat and cough, and they never seen it.

15 Q. Are you allowed to have string in the  
16 Level 6 facility?

17 A. No. I pulled it off my boxers.

18 Q. I think you said you jumped your cuffs.

19 A. Yes.

20 Q. What does that mean?

21 A. I jumped them to the front, like, from my  
22 back. I thought I could just step through them, you  
23 know.

24 Q. So they were behind you, and then you  
25 jumped over them so that they went in front of you?

1 A. Yes, yes.

2 Q. So that stabbing of Gonzalez was in 2004.

3 Did you do another assault or stabbing for the SNM

4 in 2004?

5 A. Yes, I had assaulted three COs also.

6 Q. Was that an SNM hit?

7 A. Yeah. It was sanctioned, yes.

8 Q. What do you mean, it was sanctioned?

9 A. I asked if I could, and they gave me the  
10 okay.

11 Q. So if you're going to assault a CO, do you  
12 have to ask permission?

13 A. Yeah. If you're going to assault anybody,  
14 pretty much, you have to.

15 Q. And that's when it becomes an SNM crime?

16 A. Yes.

17 Q. What happened?

18 A. It all started over the phone, you know  
19 what I mean? An argument for the phone and they  
20 started messing with me, and --

21 Q. Who is "they"?

22 A. Just the COs that work in there. That  
23 Amanda, I guess her name was.

24 Q. Don't say any names. Let's just say the  
25 COs.

1 A. Okay.

2 Q. So how did they start messing with you?

3 A. Because I was sticking up for one of my  
4 brothers, you know.

5 Q. One of your brothers? You mean one of  
6 your SNM members?

7 A. Yes, yes.

8 Q. And what happened?

9 A. Then they just took their focus onto me  
10 and I ended up getting a shampoo bottle full of  
11 feces and stuff and I threw it on them, threw it on  
12 her, and she went and got the lieutenant and got him  
13 involved.

14 And it just got out of hand from there.  
15 And they started just messing with me, so I went and  
16 I asked Arturo and Juanito, you know what I mean,  
17 these cops are messing with us, to see if I could  
18 get the okay to do something. And they told me  
19 yeah.

20 So I went and got a knife, and when they  
21 opened the door, they went to go take me and put me  
22 in the strip cell, because I was going to protest  
23 and stuff. They came over there and I had put my  
24 knife on the sink and then when they opened the door  
25 halfway, I jumped them again, and I came out. And I



1 ended up stabbing two of the COs, and the other one  
2 just took off, and that was about it right there.

3 Q. Was anyone else involved in this stabbing  
4 with you?

5 A. No, because it was -- like I said, it was  
6 segregation. So I kind of had to come out -- you  
7 know what I mean, they only open one door at a time.  
8 But I was already there on a three-man escort from  
9 the assault previously. So that's why it was three  
10 COs there.

11 Q. And then did you commit another crime in  
12 prison in 2011 by virtue of your SNM membership?

13 A. Yes.

14 Q. What was that?

15 A. I assaulted Paul Silva.

16 Q. Did you stab Paul Silva?

17 A. Yes.

18 Q. Did you stab him a lot of times?

19 A. Yes.

20 Q. Where did this happen?

21 A. In the South, right there in Santa Fe at  
22 Southern.

23 Q. The South facility at PNM in Santa Fe?

24 A. Yes.

25 Q. Did it happen in the rec yard?

1 A. Yes.

2 Q. And why did you stab Paul Silva?

3 A. Just over politics, you know. We just  
4 weren't looking eye to eye on a lot of things, and  
5 things got out of hand, disrespect, and it became a  
6 personal thing. And out of all that, I ended up  
7 having enough, stabbing him in the yard.

8 Q. So how is it a personal thing if it's  
9 still for the SNM?

10 A. Because a lot of people didn't like what I  
11 did, you know. I didn't really go ask, you know. I  
12 just really did it. But it was over a lot of things  
13 we weren't seeing eye to eye about, you know, so...

14 Q. I think you said politics. What were the  
15 things you didn't see eye to eye on?

16 A. This dude was running the pod and he was  
17 coming over there to do certain things, having  
18 everybody -- I mean, who was really running the pod,  
19 you know what I mean? That was the big thing about  
20 it. I kind of didn't want nobody running it until  
21 we got to where we were going, where Pup was at, so  
22 he could -- you know what I mean? Even everything  
23 out. Because everything was in chaos, so I just  
24 wanted to get down over there so we could get  
25 everything straight and get everything together like

1 it's supposed to be, and he wasn't hearing it, you  
2 know.

3 Q. So did Paul Silva try to assert leadership  
4 in the pod when he came in?

5 A. Yes, yes.

6 Q. And did you disagree with that?

7 A. Yes, I disagreed. I didn't want nobody  
8 running nothing there, you know.

9 Q. And I think you said once you get down to  
10 where Pup is -- is Pup the defendant Anthony Ray  
11 Baca behind me?

12 A. Yes.

13 Q. And is that the person in the back  
14 right-hand side of the room?

15 A. Yes.

16 Q. What is he wearing?

17 A. A blue suit, black suit. I can't see that  
18 far.

19 MR. BECK: Let the record reflect Mr.  
20 Calbert indicated the defendant Anthony Ray Baca.

21 THE COURT: The record will so reflect.

22 BY MR. BECK:

23 Q. Why did you want to wait to go where Pup  
24 was going to determine a leader?

25 A. Because the way the politics was, Arturo

1 had the keys there; he was making a mess of  
2 everything, had everybody fighting, and there wasn't  
3 no hope with them politics that were going around.  
4 So I wanted, you know what I mean, to get somebody a  
5 little bit smarter to put things together before I  
6 fell in line, you know?

7 Q. So you were looking at Mr. Baca as that  
8 person who would put things together?

9 A. Yes.

10 Q. Did you expect him to pick a leader of the  
11 pod?

12 A. Well, we had already been over there in  
13 Las Cruces, or over here in Las Cruces, so we  
14 wouldn't have needed a leader because he would have  
15 been it.

16 Q. He would have been the leader?

17 A. Yes.

18 Q. Who else stabbed Paul Silva with you?

19 A. Mauricio Varela.

20 Q. Now, if there were documents in your  
21 prison file in which you said, "I'm not an SNM Gang  
22 member; I'm done with those guys," you said this in  
23 2009, why is that?

24 A. Because it's required of us to not talk to  
25 law enforcement about anything, validation or

1 anything like that, because for fear of your life,  
2 you know what I mean, if anything gets out.

3 Q. So that's a rule required by the SNM, not  
4 to talk to correction officers?

5 A. Yes.

6 Q. So is that why those documents say that  
7 you said you're not an SNM member?

8 A. Yes.

9 Q. Were you an SNM member in 2008?

10 A. Yes.

11 Q. Were you an SNM member in 2009?

12 A. Yes.

13 Q. Were you an SNM member in 2017?

14 A. Yes.

15 Q. I'm going to show you what's been marked  
16 for admission, Government's Exhibits 692 and 693.

17 MR. BECK: May I approach the witness?

18 THE COURT: You may.

19 BY MR. BECK:

20 Q. Do you recognize those documents I just  
21 handed you, Mr. Calbert?

22 A. Yes.

23 Q. Is that your plea agreement and addendum?

24 A. Yes.

25 MR. BECK: Your Honor, at this time the

1 United States moves into admission documents 629 and  
2 693.

3 THE COURT: Any objection from the  
4 defendants?

5 MS. JACKS: No objection.

6 MS. DUNCAN: No, Your Honor.

7 MS. BHALLA: No objection.

8 THE COURT: Government's Exhibits 692 and  
9 693 will be admitted into evidence.

10 (Government Exhibit 692 and 693 admitted.)

11 MR. BECK: Bring up 692.

12 BY MR. BECK:

13 Q. What is this document, Mr. Calbert?

14 A. It's my plea agreement, what I pled guilty  
15 to.

16 Q. And did you plead guilty on September 28,  
17 2017?

18 A. Yes.

19 Q. Did you plead guilty to all the charges  
20 that the federal government filed against you?

21 A. Yes.

22 Q. Document 693, please.

23 Focus in on the top -- the bottom  
24 paragraph. Is this the addendum to your plea  
25 agreement?

1 A. Yes.

2 Q. And what do you understand this document  
3 to mean?

4 A. That I pled guilty to both counts and that  
5 I'm facing up to 30 years, and --

6 Q. Let me ask you this question, Mr. Calbert.  
7 Do you expect to receive some benefit from the  
8 federal government for testifying here today?

9 A. Yeah, I would think so, you know.

10 Q. What do you have to do?

11 A. To testify and whatever they need me to  
12 do, you know. Tell the truth.

13 Q. All right. Why did you decide to  
14 cooperate in 2017?

15 A. Because I just got tired of attempts on my  
16 life, you know. This last time was the last straw,  
17 you know.

18 Q. What happened the last time?

19 A. They said they came up, but some bogus  
20 paperwork that -- I don't know where they got it  
21 from or what, but they said they had some paperwork.  
22 So it was either, I'm going to have to keep going  
23 and killing and doing all this, digging myself a  
24 hole where I'm never going to climb out of it; or  
25 this. You know what I mean? So there wasn't

1 nothing worth fighting for anymore, you know. I  
2 just decided to get out.

3 Q. When you say they had paperwork and they  
4 made an attempt on your life, are you referring to  
5 other SNM members?

6 A. Yes.

7 Q. And by "paperwork," do you mean, as we  
8 discussed earlier, a document where you cooperated  
9 with law enforcement?

10 A. Yes, yes.

11 Q. Did that paperwork exist?

12 A. Somebody must have typed it up, but like I  
13 said, I've never done anything like that until right  
14 now.

15 Q. Have you already received some benefits?

16 A. Yes.

17 Q. You began cooperating in August of last  
18 year. Does that sound right? August of 2017?

19 A. Yes. I'm bad on dates. But yeah, that  
20 sounds...

21 Q. Were you provided lunch that day from  
22 Blake's Lotaburger?

23 A. Yes.

24 Q. Did you -- and up to this point, have you  
25 received about \$408.05 in benefits from the



1 Government?

2 A. Yes, about.

3 MS. DUNCAN: Your Honor, we object to this  
4 leading. He can ask the witness what benefits he  
5 received without telling him what they are.

6 MR. BECK: I can do that, Your Honor.

7 THE COURT: All right.

8 BY MR. BECK:

9 Q. What other benefits have you been provided  
10 because of your cooperation?

11 A. I just got to go to a better spot. You  
12 know what I mean? I get my TV and my radio and  
13 stuff like that. More canteen, more calls, you  
14 know. That money, like I said.

15 Q. Did you also get a visit with a family  
16 member?

17 A. That's right. I got a visit with my  
18 people.

19 Q. How many visits with your people did you  
20 get?

21 A. Just one.

22 Q. Now, before you cooperated that day, did  
23 you meet with another SNM member, Lupe Urquizo?

24 A. Yes, yes.

25 Q. And were his attorneys there?

1 A. Yes, he was there. She was there.

2 Q. And did you -- and you met with them  
3 before you met with Special Agent Acee; is that  
4 right?

5 A. Yes, yes.

6 Q. Did y'all talk about this case?

7 A. Yeah. Well, pretty much, just like trying  
8 to --

9 Q. Without telling me what you said.

10 A. Yes, we talked a bit about it, yes.

11 Q. Then afterwards, did you talk to Special  
12 Agent Acee?

13 A. Yes.

14 Q. And did you tell Special Agent Acee -- I  
15 won't ask you that question.

16 I want to talk to you about 2014. Where  
17 were you in the beginning of 2014?

18 A. Like I said, I'm bad with dates. 2014, I  
19 think I was at the South. I'm not sure.

20 Q. At some point -- are you talking about the  
21 South facility at PNM?

22 A. Yes. In Santa Fe, yes.

23 Q. Prior to that, at some point, were you at  
24 the North facility?

25 A. Yes.

1 Q. Were you there after the Paul Silva  
2 stabbing?

3 A. Yes, over there.

4 Q. At some point in the rec yard did you have  
5 a conversation with a man named Cheech?

6 A. Yes. Yes.

7 Q. What happened?

8 A. Nothing. He just said that like --

9 Q. Hold on one second.

10 MS. DUNCAN: Your Honor, I have an  
11 objection as to hearsay.

12 THE COURT: Well, let's see what the  
13 question is going to be, Mr. Beck.

14 MR. BECK: Sure.

15 BY MR. BECK:

16 Q. Were you provided the paperwork on Javier  
17 Molina?

18 A. Yes, yes.

19 Q. Were you provided that paperwork from  
20 Cheech?

21 A. Yes. Yes.

22 Q. And what did the -- what was the Molina  
23 paperwork, as I'm referring to it?

24 A. Just that he told on some robbery. He  
25 robbed some old lady, and he was telling on the

1 people who were with him, who did what. And it was  
2 just a real quick sentence. It wasn't nothing,  
3 like, fantastic, you know. It was paperwork.

4 Q. Was it a letter? Was it --

5 A. It was a document from the police, like a  
6 statement.

7 Q. Was it a police report?

8 A. Yeah. It was a police report that he  
9 made, you know.

10 Q. And what happens when an SNM member has a  
11 statement come out against someone else in a law  
12 enforcement report?

13 A. Well, the person who did it, they got a  
14 hit on their life, you know.

15 Q. Is that also referred to as a green light?

16 A. Yes.

17 Q. And with this paperwork, did you agree to  
18 take it and pass it to someone else?

19 A. Yes. Yes.

20 Q. And was Javier Molina ultimately murdered?

21 A. Yes.

22 Q. So you participated in the agreement to  
23 make sure that Javier Molina got murdered?

24 A. Yes.

25 Q. And Cheech did -- I think you said Cheech

1 provided you the paperwork?

2 A. Yes.

3 Q. Did he tell you what it was?

4 A. Yes.

5 MR. BECK: Your Honor, I'm about to get  
6 into the statement. Do we need to approach?

7 THE COURT: Well, I'll overrule the  
8 objection. Go ahead.

9 BY MR. BECK:

10 Q. When you were outside in the yards with  
11 Cheech, how did he give you this paperwork on Javier  
12 Molina?

13 A. He took it out there and just rolled it up  
14 tight so it could fit through the holes in the cage,  
15 and he just handed it to me like that when I passed,  
16 you know?

17 Q. I'm going to give you what's been admitted  
18 as Government's Exhibit 693.

19 MR. BECK: May I approach the witness,  
20 Your Honor?

21 THE COURT: You may.

22 BY MR. BECK:

23 Q. If you can with those cuffs on, will you  
24 show me how he rolled up the paperwork when he  
25 passed it to you?

1           A.     Just like that, small, so it will fit  
2 through the holes in the cages.

3           Q.     So you both were in cages? Was he in the  
4 cage next to you?

5           A.     Yeah, yes.

6           MR. BECK: May I approach, Your Honor?

7           THE COURT: You may.

8 BY MR. BECK:

9           Q.     He passed it through the cage? Did he say  
10 anything about the paperwork?

11          A.     He just said that he was telling, and that  
12 was it. He really didn't tell me exactly word for  
13 word. He just summed it up and said that they  
14 wanted me to take it down there at first. And I  
15 told him, "No, this ain't even nothing."

16                 And then when he threw Pup's name in  
17 there, he said, "Yeah, Pup wants you to take it down  
18 there."

19          Q.     He said, "Pup wants you to take it down  
20 there?" Is that Mr. Baca?

21          A.     Yes.

22          Q.     And what did you understand Mr. Cheech to  
23 mean?

24          A.     To take the paperwork down there?

25          Q.     Yes. What did you understand that he

1 meant?

2 A. That pretty much, I was required to carry  
3 the paperwork to make sure I get it over there to  
4 Southern facility and over here.

5 Q. So did you take that paperwork after that  
6 from the North facility to the South facility?

7 A. Yes. Yes.

8 Q. And what did you do with that paperwork  
9 once you were at the South facility?

10 A. I gave it to Lupe Urquizo. He asked for  
11 it, and I gave it to him.

12 Q. Just for the record, do you know Cheech's  
13 real name?

14 A. I don't.

15 Q. Is he an SNM member?

16 A. Yes.

17 Q. After you were arrested by the federal  
18 government for the case you pled guilty to, were you  
19 incarcerated with -- let me ask that a different  
20 way. After you were arrested for this case, did you  
21 have a discussion with the defendant Rudy Perez?

22 A. After, yes. Yes.

23 Q. And is that Rudy Perez -- is he in the  
24 courtroom today?

25 MS. DUNCAN: Your Honor, we'll stipulate.

1 THE COURT: Is that satisfactory?

2 MR. BECK: That's satisfactory, Your  
3 Honor.

4 THE COURT: Mr. Beck.

5 BY MR. BECK:

6 Q. Where did the discussion with Mr. Perez  
7 happen?

8 A. In the shower. In the shower.

9 Q. That's good. In the shower. And what did  
10 Mr. Perez tell you?

11 A. He just said that, man, out there -- he's  
12 trying to make a joke, you know what I mean? I  
13 wanted credit for all this that went on, you know  
14 what I mean, at first. He said, well, after all  
15 this came down, he said no, I don't want nothing to  
16 do with it after all.

17 Q. So at first --

18 MS. DUNCAN: Your Honor, could we have a  
19 limiting instruction as to this testimony?

20 MS. JACKS: I would join.

21 THE COURT: It appears Mr. Calbert is  
22 testifying to statements that Mr. Perez made to him.  
23 You can only use these statements in deciding the  
24 charges against Mr. Perez. You cannot use this  
25 evidence in any way in your deliberations as to the



1 other three defendants.

2 All right, Mr. Beck.

3 BY MR. BECK:

4 Q. He told you he wanted to take credit for  
5 this?

6 A. Yeah, because he was crippled and can't  
7 get around, so I guess he wanted to do something.

8 Q. What do you mean, he wanted to do  
9 something?

10 A. To, like, put in and say, "I did  
11 something, I put in," you know what I mean? A piece  
12 of metal or whatever, you know, from his walker.

13 Q. So you understood him to mean he'd get  
14 credit for putting in a piece of his walker?

15 A. Yes. Yes.

16 Q. Now, earlier you said -- you testified  
17 about crimes you did for the SNM.

18 A. Yes.

19 Q. Have you ever heard of putting in work?

20 A. Yes.

21 Q. What does that mean?

22 A. Just either assaulting somebody or  
23 stabbing somebody, killing somebody for the cause,  
24 for the SNM.

25 Q. What did you understand Mr. Molina -- or

1 excuse me. What did you understand Mr. Perez to  
2 mean when he said he wanted to get credit for his  
3 walker?

4 A. I took it that he just wanted to be part  
5 of the thing that happened, the murder. And I just  
6 felt he wanted to be part of it, you know, because  
7 he can't do nothing else. He can't fight or -- like  
8 I said, he's in a walker, a wheelchair. I think he  
9 just wanted to put in something, you know, to be  
10 part of the team.

11 MR. BECK: May I have a moment, Your  
12 Honor?

13 THE COURT: You may.

14 BY MR. BECK:

15 Q. A couple more questions for you. When you  
16 met with Special Agent Acee and agreed to cooperate,  
17 we talked about how you met with Lupe Urquizo and  
18 your attorneys before that?

19 A. Yes. Yes.

20 Q. How long was the meeting? Was it a short  
21 meeting or a long meeting?

22 A. It wasn't very long. Maybe five minute or  
23 something.

24 Q. You said when you went down to the South  
25 facility at PNM, you gave Lupe Urquizo the

1 paperwork. Do you remember that?

2 A. Yes.

3 Q. Why did you give him the paperwork?

4 A. So he could take it down. Because he was  
5 going before I was. I had just arrived there. And  
6 I gave it to him so he could take it. They asked  
7 for it, really, you know, so I gave it to him. They  
8 were going that day. So they were on that bus.  
9 They would have got down there faster, you know.

10 Q. So Lupe Urquizo asked you for the  
11 paperwork?

12 A. Yes.

13 Q. Did he know what it was?

14 A. Yes.

15 Q. And when you say "going down there," where  
16 was he going?

17 A. Well, down here to Cruces. To Las Cruces,  
18 to the prison.

19 Q. Is that the Southern New Mexico  
20 Correctional Facility?

21 A. Yes.

22 Q. Was Javier Molina incarcerated at the  
23 Southern New Mexico Correctional Facility then?

24 A. Yes.

25 Q. Is Lupe Urquizo an SNM member?

1 A. Yes.

2 Q. So you handed Lupe Urquizo the paperwork  
3 and said they were going down. Who is "they"?

4 A. Mauricio Varela, Lupe. And I think that's  
5 all that went on that bus at that time. It was just  
6 them.

7 Q. Is Mauricio Varela also an SNM member?

8 A. Yes.

9 MR. BECK: Pass the witness, Your Honor.

10 THE COURT: Thank you, Mr. Beck.

11 Ms. Duncan, do you wish to cross-examine  
12 Mr. Calbert?

13 MS. DUNCAN: Yes, Your Honor.

14 THE COURT: Ms. Duncan.

15 FURTHER CROSS-EXAMINATION

16 BY MS. DUNCAN:

17 Q. Mr. Calbert, when did the conversation  
18 with Cheech happen?

19 A. It was right after the Silva case, what  
20 happened with Silva. And they had put me in 1-B,  
21 away from everybody. And I don't know what year it  
22 was. Like I said, I'm real bad with dates and  
23 things like that.

24 Q. How long was it between the time of that  
25 conversation with Cheech and you moving to South?

1           A.     I would say maybe within that four to five  
2 months.

3           Q.     You've never -- at that point you had  
4 never met Mr. Baca; correct?

5           A.     No.

6           Q.     You had never had a conversation with him?

7           A.     No.

8           Q.     The recreation yard at PNM North, the  
9 cells are -- the rec yards are separated by -- they  
10 have gaps between the walls; correct?

11          A.     Yes.   Yes.

12          Q.     How far apart are those recreation cells?

13          A.     They're a little far away, about arm's  
14 length.

15          Q.     And you and Cheech were not in the same  
16 pod; correct?

17          A.     No.

18          Q.     And you've never been in the same pod as  
19 Cheech?

20          A.     No.   No.

21          Q.     When is the first time you met him?

22          A.     A long time.   I've known him for years.

23          Q.     Where did you meet him?

24          A.     I think it was in Las Cruces, over here in  
25 the prison.

1 Q. You talked to Mr. Beck a little bit about  
2 your criminal history, and I'd like to talk some  
3 more about it. Your first conviction was in 1995  
4 for possession of a controlled substance; correct?

5 A. Yes.

6 Q. Possession of methamphetamine?

7 A. Yes.

8 Q. And then your second conviction was in  
9 1998, aggravated assault with a deadly weapon;  
10 correct?

11 A. Yes.

12 Q. And that was the drive-by shooting you  
13 mentioned?

14 A. Yes.

15 Q. Who was in the car that you shot at?

16 A. Adam Smith and Jared Smith.

17 Q. Who are Adam and Jared Smith?

18 A. Just some guys from where I'm from.

19 Q. And why did you shoot at them?

20 A. They tried to run over my little brother.

21 Q. Were either of them injured?

22 A. No.

23 Q. And you were also charged with possession  
24 of a firearm by a felon; correct?

25 A. Yes.

1 Q. And this was based on your prior  
2 conviction for possession of methamphetamine?

3 A. Yes.

4 Q. Next you were convicted in 2006 of  
5 aggravated battery; correct?

6 A. Yes.

7 Q. And what were the circumstances of that  
8 offense?

9 A. That was on the sheet; right?

10 Q. You tell me.

11 A. Well, I don't -- I think it was the same  
12 guys, Adam and Jared Smith. I think that's the one  
13 I got caught for.

14 Q. And in -- I skipped one. In 1999, you  
15 were convicted of possession of a weapon by a  
16 prisoner; correct?

17 A. Yes. That was in prison.

18 Q. What facility were you in when you --

19 A. In Las Cruces.

20 Q. And then you were convicted again in 2008  
21 for the offense you described happening in 2004;  
22 correct?

23 A. Yes.

24 Q. And in 2004, first you assaulted Anthony  
25 Gonzalez; correct?

1 A. Yes.

2 Q. And I can't remember what name you called  
3 him?

4 A. Bandit.

5 Q. Bandit. Okay. So I think you talked  
6 about you were being escorted from the rec yard, and  
7 Bandit was being escorted to the rec yard; correct?

8 A. Yes.

9 Q. And you were being escorted by a  
10 correctional officer?

11 A. Yes.

12 Q. And you escaped that correctional officer?

13 A. Yes.

14 Q. And then jumped your cuffs, meaning you  
15 brought your cuffs from the back to the front?

16 A. Right.

17 Q. Grabbed a shank and then stabbed Bandit;  
18 correct?

19 A. Yes.

20 Q. How many times did you stab Bandit?

21 A. Maybe three. I think about three or  
22 something like that.

23 Q. And where on his body did you stab him?

24 A. His neck.

25 Q. One of the COs tried to intervene as you



1 were stabbing Bandit; correct?

2 A. Yes.

3 Q. And ended up pushing him into the fence to  
4 protect him?

5 A. Yes.

6 Q. You ultimately were found guilty of  
7 aggravated battery on those COs as well as  
8 aggravated battery on Bandit; correct?

9 A. Yes, I pled.

10 Q. And then you were on prehearing detention  
11 for that offense when you attacked the correctional  
12 officers; right?

13 A. Yes.

14 Q. And so from your testimony it sounds like  
15 you wanted to attack the COs for personal reasons,  
16 but had to get permission; is that right?

17 A. No. Because I was sticking up for my  
18 brothers. Like I said, it started with Lupe, you  
19 know.

20 Q. Lupe Urquizo? You were sticking up for  
21 Lupe Urquizo?

22 A. Yes.

23 Q. The person who you met with before you met  
24 with the FBI?

25 A. Yes.

1 Q. And you actually served as a personal  
2 representative for Mr. Urquizo when he had picked up  
3 a disciplinary charge; correct?

4 A. Yes.

5 Q. Had you done that only once or on more  
6 occasions?

7 A. I think it was just that one time.

8 Q. And I think you testified that you were  
9 sticking up for him and then later they disrespected  
10 you; correct?

11 A. Yes. They turned their attention to me.

12 Q. So the officers came to your cell and  
13 asked you to cuff up; correct?

14 A. Yes.

15 Q. And you put your hands through the food  
16 port for them to put the cuffs on behind you?

17 A. Yes.

18 Q. And then as they opened the door, you once  
19 again pulled your hands from your back to your  
20 front?

21 A. Yes.

22 Q. And in addition to being known as Spider,  
23 you're also known as Houdini; is that correct?

24 A. That's what they said in the paper, yeah.

25 Q. Then after you pulled your hands to the

1 front, you had a shank in your hand; correct?

2 A. Yes.

3 Q. And you chased Lieutenant Allen around the  
4 pod with that shank?

5 A. Yes.

6 Q. And you stabbed him?

7 A. Yes.

8 Q. And then you turned your attention to a  
9 Sergeant Gould; correct?

10 A. Yes.

11 Q. Chased him around the pod, as well, and  
12 stabbed him?

13 A. Yes.

14 Q. And for that you were convicted of  
15 multiple counts of aggravated assault on a peace  
16 officer, aggravated battery with a deadly weapon,  
17 and possession of a deadly weapon by a prisoner;  
18 correct?

19 A. Yes.

20 Q. And your sentences were enhanced because  
21 you had been convicted of previous felonies;  
22 correct?

23 A. Yes.

24 Q. And then in this case you were charged  
25 with the attack on Paul Silva; correct?

1 A. Yes.

2 Q. And that was about a power struggle  
3 between you and Mr. Silva; correct?

4 A. Yeah. Yes.

5 Q. And in that case, you and Mauricio Varela  
6 attacked Mr. Silva in the rec yard; correct?

7 A. Yes.

8 Q. You stabbed Mr. Silva multiple times?

9 A. Yes.

10 Q. And Mr. Varela kicked him in the head?

11 A. Yes.

12 MS. DUNCAN: Your Honor, at this place I'd  
13 like to --

14 Q. You're aware that the attack on Mr. Silva  
15 was videotaped; correct?

16 A. Yes.

17 Q. And you've seen that videotape?

18 A. Yes.

19 Q. And that accurately reflects the attack  
20 that you committed on Mr. Silva?

21 A. Yes, yes.

22 MS. DUNCAN: Your Honor, that video is  
23 Defense Exhibit PS, and we would move to admit it at  
24 this time.

25 MR. BECK: No objection, Your Honor.

1 THE COURT: All right. Any objection from  
2 the other defendants? Not hearing any --

3 MS. FOX-YOUNG: No, Your Honor.

4 MS. BHALLA: No, Your Honor.

5 THE COURT: All right. Defendant's  
6 Exhibit PS will be admitted into evidence.

7 (Defendants' Exhibit PS admitted.)

8 MS. DUNCAN: If we could play that?

9 Your Honor, that video was produced in  
10 discovery and we're going to try to play it without  
11 the sound track. If we could pause it, please,  
12 here. Take it back.

13 BY MS. DUNCAN:

14 Q. So looking at the screen, can you tell us  
15 which -- where are you in this video? I apologize.  
16 The counter number is 6:5:21:781.

17 A. I'm the one on the right.

18 Q. And who is -- and do you have anything --  
19 you have a shank in your hand; correct?

20 A. Yes.

21 Q. And the person on the left is Mauricio  
22 Varela?

23 A. Yes.

24 MS. DUNCAN: If you can continue the  
25 video, please.

1 (Tape played.)

2 Q. How many times did you stab Mr. Silva?

3 A. They told me 14.

4 Q. And he was hospitalized for those  
5 injuries; correct?

6 A. Yes.

7 Q. You pled guilty to two offenses related to  
8 your attack on Mr. Silva; correct?

9 A. Yes.

10 Q. One was conspiracy to murder him?

11 A. Yes.

12 Q. And the other was assaulting him with a  
13 dangerous weapon?

14 A. Yes.

15 Q. And for those two offenses you face a  
16 maximum sentence of 30 years?

17 A. Yes. Yes.

18 Q. And you talked with Mr. Beck about an  
19 addendum to your plea agreement where you agreed to  
20 cooperate with the Government in this case; correct?

21 A. Yes.

22 Q. And you're expecting a reduced sentence as  
23 a result of that cooperation?

24 A. I would think, yes.

25 Q. And in that addendum you understand that

1 it's up to the Government, the people here, to  
2 request that reduced sentence; correct?

3 A. Yes.

4 Q. And they don't have to; they only -- it's  
5 completely up to them?

6 A. Yes.

7 Q. You're not charged with conspiracy to kill  
8 Javier Molina; correct?

9 A. No.

10 Q. They didn't bring any charges against you?

11 A. No, no.

12 Q. Or with the murder itself?

13 A. No.

14 Q. Although you admit that you gave the  
15 paperwork to Lupe Urquizo, understanding that it  
16 would be used to authorize a hit; correct?

17 A. Yes.

18 Q. Now, in 2014 you filed a lawsuit against  
19 Gregg Marcantel; correct?

20 A. Yes.

21 Q. And it was a lawsuit complaining about the  
22 way the Department of Corrections was treating you  
23 and others in the wake of the Javier Molina murder?

24 A. Yes.

25 Q. And you were complaining because -- that

1 you had been locked down following that murder;  
2 correct?

3 A. Yes.

4 Q. And had lost some of your privileges?

5 A. Yes.

6 Q. You'd been stripped of your property;  
7 you'd lost visits with your family?

8 A. Yes.

9 Q. Lost phone calls?

10 A. Yes.

11 Q. Lost commissary?

12 A. Yes.

13 Q. And you were in segregation?

14 A. Right.

15 Q. And so you -- in filing the lawsuit, you  
16 were seeking a change in your conditions; correct?

17 A. Right.

18 Q. You wanted more phone calls?

19 A. Yes.

20 Q. More visits?

21 A. Yes.

22 Q. More showers?

23 A. Yes.

24 Q. And you also sought monetary damages. You  
25 were seeking \$1,000 a day for every day that you



1 were held in those conditions; correct?

2 A. Yes.

3 Q. And you signed that complaint before you  
4 filed it; correct?

5 A. Yes.

6 Q. You signed it under penalty of perjury;  
7 right?

8 A. Yes.

9 Q. And you signed saying you had reviewed  
10 that complaint and everything in it was true --

11 A. Yes.

12 Q. -- and correct to the best of your  
13 ability?

14 A. Yes.

15 Q. And then you filed it with the Court?

16 A. Yes.

17 Q. A Court much like this one?

18 A. Yes.

19 Q. And in that complaint you asserted, "This  
20 plaintiff" -- that would be you; correct? You were  
21 the plaintiff in that lawsuit?

22 A. Right.

23 Q. "This plaintiff had no involvement in any  
24 crime or disciplinary infraction with the murder  
25 that took place at the Southern New Mexico

1 Correctional Facility on March 7, 2014"; correct?

2 A. Yes.

3 Q. And that would have been the murder of  
4 Javier Molina?

5 A. Yes.

6 Q. So you swore under oath that you had no  
7 involvement with the murder of Javier Molina;  
8 correct?

9 A. Yes, but that didn't go through. I never  
10 came of nothing because I didn't do it right.

11 Q. But you nonetheless swore under oath that  
12 you had nothing to do with it --

13 A. Yeah.

14 Q. -- in an effort to improve your  
15 conditions.

16 A. Okay. Yes.

17 Q. Correct? And win some monetary damages?

18 A. Yes.

19 MS. DUNCAN: Your Honor, if I could have a  
20 moment?

21 THE COURT: You may.

22 BY MS. DUNCAN:

23 Q. Actually, Mr. Calbert, when is your parole  
24 date?

25 A. It's already passed. It was March '15,

1 but I'm doing parole right now in-house.

2 THE COURT: Ms. Duncan, would you clear up  
3 the last word that he just said? Did he say  
4 "hospital"?

5 Q. You were talking about being on parole?  
6 You're on parole right now?

7 A. I'm doing in-house parole right now.

8 Q. In-house parole. And you're being  
9 detained in this case until sentencing; correct?

10 A. Right.

11 Q. The sentence for which you're going to  
12 face 30 years?

13 A. Yes.

14 MS. DUNCAN: I have no further questions,  
15 Your Honor.

16 THE COURT: Thank you, Ms. Duncan.

17 Ms. Fox-Young, do you wish to  
18 cross-examine Mr. Calbert?

19 MS. FOX-YOUNG: Yes, Your Honor.

20 CONTINUED CROSS-EXAMINATION

21 BY MS. FOX-YOUNG:

22 Q. Mr. Calbert, you know you're under oath  
23 today?

24 A. Yes.

25 Q. And I think you testified a few minutes

1 ago that attack when you tried to kill Paul Silva --

2 A. Yes.

3 Q. -- that that was ordered by the SNM?

4 A. No, it wasn't.

5 Q. You told the Government that -- there was  
6 just a certain way that Mr. Beck asked you, wasn't  
7 this really done for the SNM? And you said, yeah,  
8 you were trying to curry favor, so it was for the  
9 SNM; is that right?

10 A. In a way it was. In a way it wasn't.

11 Q. In a way it wasn't, because actually, you  
12 told the Government last August that it wasn't  
13 sanctioned by the SNM leadership; right? It had  
14 nothing do with the SNM; isn't that right?

15 A. It did and it didn't, like I said.

16 Q. Did you or did you not tell the Government  
17 last August that it wasn't sanctioned?

18 A. Oh, yeah.

19 Q. That's right. And you've been asked about  
20 some other situations where you decided to kill  
21 people; right?

22 A. Excuse me? Say it again.

23 Q. You've been asked about some other  
24 circumstances, some other past convictions where you  
25 made the decision to kill people.

1 A. No.

2 Q. No?

3 A. No.

4 Q. Well, let's talk about -- was it Mr.  
5 Gonzalez, a gentleman that you sent to the hospital  
6 in Santa Fe?

7 A. Okay.

8 Q. Was that Mr. Gonzalez?

9 A. Yes.

10 Q. And that was in 2004; right?

11 A. Yes.

12 Q. And in that case, you made a shank and you  
13 attacked Anthony Gonzalez. Several times you struck  
14 him in the neck and the body; is that right?

15 A. Yes.

16 Q. And it was only when you were sprayed with  
17 some chemical agents that you stopped attacking him;  
18 right?

19 A. No, they didn't spray me. No.

20 Q. Did they release some chemical agents into  
21 the air?

22 A. Not that time.

23 Q. Not that time? A different time?

24 A. Yes.

25 MS. FOX-YOUNG: Your Honor, may I approach

1 the witness?

2 THE COURT: You may.

3 BY MS. FOX-YOUNG:

4 Q. Do you recognize this picture?

5 A. Yes.

6 Q. Will you tell me what it is?

7 A. It's a hole in Anthony's, whatever,  
8 Gonzalez's neck.

9 Q. It's a hole in his neck that you made?

10 A. Yes.

11 MS. FOX-YOUNG: Your Honor, I'd like to  
12 mark this as Exhibit EN.

13 THE COURT: Before you turn it on, why  
14 don't we see it?

15 MR. BECK: No objection.

16 MS. FOX-YOUNG: I'm sorry, Judge. I  
17 shared it with the Government.

18 THE COURT: Anybody else have any  
19 objection? Not hearing any, Defendant's Exhibit EN  
20 will be admitted into evidence.

21 (Defendants' Exhibit EN admitted.)

22 BY MS. FOX-YOUNG:

23 Q. That's Mr. Gonzalez's neck?

24 A. Yes.

25 Q. And how many times -- you said you stabbed

1 Mr. Gonzalez three times in the neck?

2 A. No, once in the neck, and I think a couple  
3 of times in the chest.

4 Q. Oh, okay. And those injuries to his chest  
5 aren't pictured here?

6 A. Right.

7 Q. And you know you sent him to St. Vincent's  
8 Hospital where he received treatment; right?

9 A. Yes.

10 Q. Do you know if he told anything to the  
11 cops when they came to see him at the hospital?

12 A. I don't think so.

13 Q. Yeah, he didn't say anything; right?

14 A. Right.

15 Q. Because what would have happened to him if  
16 he had said something about what you did to him?

17 A. His own people probably would have got  
18 him.

19 Q. You or somebody else would have killed him  
20 again? Tried to kill him again?

21 A. Or his own people.

22 Q. Who are his own people?

23 A. Surenos.

24 Q. And you talked a little bit about an  
25 incident with a correctional officer you attacked?

1 A. Yes.

2 Q. Do you remember his name?

3 A. Alden. I don't remember his whole name.  
4 Allen something.

5 Q. And when was that?

6 A. It was about -- I think it was 2004.

7 Q. What caused you to attack that  
8 correctional officer?

9 A. Like I said, the situation blew out of  
10 control when I was sticking up for one of my  
11 brothers because of the phone. It started real  
12 simple and then it ended up to that, you know.  
13 Ended up a big thing, ended up putting their  
14 attention on me, took it off him, for fighting for  
15 the phone. And their attention went on me and it  
16 blew out of control.

17 Q. And so that's why you made the decision to  
18 attack him?

19 A. Yes. Well, I went and asked. You know  
20 what I mean? I can't just do things by myself, you  
21 know.

22 Q. Who did you ask?

23 A. I asked Arturo Garcia. Well, I asked  
24 Juanito, and he went and asked him.

25 Q. So Mr. Calbert, that attack was on



1 December 29, 2004?

2 A. Right.

3 Q. In the evening, 5:25 p.m.?

4 A. Yes.

5 Q. And you recall -- at that time were you in  
6 the Penitentiary of New Mexico?

7 A. Yes, at the maximum security right there.

8 Q. You were at X pod?

9 A. Yes.

10 Q. And you had your hands behind your back  
11 and an officer cuffed you; is that right?

12 A. Yes.

13 Q. And then Lieutenant Allen ordered that  
14 your door be opened?

15 A. Yes.

16 Q. And you were sitting on the toilet and you  
17 figured out how to slip out of the cuffs; right?

18 A. Yes.

19 Q. And at that time you had somehow in your  
20 hand a homemade knife?

21 A. Yes.

22 Q. And you came charging out of your cell and  
23 began pursuing Lieutenant Allen; right?

24 A. Yes.

25 Q. And you were stabbing him.

1 A. Yes.

2 Q. And he ran away. He ran over to the  
3 shower stand, and you followed him, and you kept  
4 stabbing him; right?

5 A. Yes.

6 Q. And then you charged a sergeant.

7 A. Yes. Yes.

8 Q. And you stabbed him, too?

9 A. Yeah. He tried to stop it.

10 Q. And in order to stop you, that's when they  
11 used chemical agents; right?

12 A. Yes.

13 Q. And you took another stab at Lieutenant  
14 Allen and continued chasing them; is that right?

15 A. Yes.

16 Q. Then you started climbing over the table?

17 A. Yes.

18 Q. And as Lieutenant Allen backed away, he  
19 fell down, and you kept stabbing him.

20 A. Yes.

21 Q. Okay. So when in that series of events  
22 did you ask anybody -- you made the decision in that  
23 moment that you were going to attack Lieutenant  
24 Allen; right?

25 A. It was an ongoing thing, you know. It

1 happened --

2 Q. I'd also like to ask you a little bit more  
3 about your plea. You pled to the assault of Paul  
4 Silva; right?

5 A. Yes.

6 Q. And I think you said you understand that  
7 the Government has entered into an agreement with  
8 you. That's that 5K document?

9 A. Yes.

10 Q. Whereby, based upon the stories that you  
11 tell for the Government and the work you do for the  
12 Government, they might help you in getting a reduced  
13 sentence; is that right?

14 A. Yes, they might. Yes.

15 Q. And they also have agreed not to charge  
16 you for the murder or conspiracy to murder Javier  
17 Molina?

18 A. They didn't promise me nothing like that.  
19 They never charged me for that.

20 Q. They didn't charge you, even though you  
21 told this jury that you're guilty of it a few  
22 minutes ago?

23 A. Right.

24 Q. And that's because you're working for the  
25 Government.

1 A. Yes.

2 Q. You talked about some benefits. Mr. Beck  
3 discussed about some benefits that you might have  
4 received from the Government. Do you remember  
5 talking to your family about some things the  
6 Government had promised you?

7 A. Probably.

8 Q. Yeah. You know that those calls that you  
9 make from the jail are all recorded; right?

10 A. Yes.

11 Q. Yeah. And that the Department of  
12 Corrections can listen to those calls?

13 A. Yes.

14 Q. And that they get produced to the defense?

15 A. Yes.

16 Q. Through discovery?

17 A. Yes.

18 Q. And they go on the tablets, like the  
19 tablets that -- the tablet that you had or maybe you  
20 still have?

21 A. I -- yes.

22 Q. And on that tablet, you can listen to the  
23 calls and you can read all the material in the case,  
24 know the theories. And so in your calls you told  
25 some family members that you're only going to get

1 three years, didn't you?

2 A. I don't remember that.

3 Q. You don't remember that? We can play that  
4 call for you. You told them about the TV that the  
5 STIU officer gave you?

6 A. Yes, because they lost mine.

7 Q. So he wanted to make sure you had one.  
8 You also talked about how hard it was to be facing  
9 30 years.

10 A. Yes.

11 Q. And thinking that you wouldn't get out.  
12 That was last June; right?

13 A. Yeah. Like I say, I'm bad on dates. But  
14 I probably could have said that, yes.

15 Q. And then later, after you started working  
16 for the Government, you told your family that you  
17 were going to be home soon; right?

18 A. I hope. I hope.

19 Q. You told them that you were going to be  
20 home soon and that you did things that you didn't  
21 think you were going to do, but it was all worth it;  
22 is that right?

23 A. Yeah.

24 Q. Telling stories for the Government?

25 A. Not telling stories. Telling the truth.

1 Q. And you told your family about how spoiled  
2 the Government had you?

3 A. Compared to what I was at.

4 Q. You told them that you were spoiled and  
5 that you were living pretty good.

6 A. Yeah, compared to Estancia.

7 Q. Mr. Calbert, you had been housed at one  
8 time or another with an individual named Mario  
9 Rodriguez; is that right?

10 A. Yes.

11 Q. Tell me when you were housed with Mr.  
12 Rodriguez.

13 A. I'm housed with him right now, but it's  
14 been a few times I've been in there with him.

15 Q. I'd like to put up the Defendant's  
16 Exhibit -- I'm sorry, the Government's Exhibit 586.

17 Is that Mr. Rodriguez?

18 A. Yes.

19 Q. So you're housed with him now? You've  
20 known him a while?

21 A. Yeah, I could say.

22 Q. How long have you known him?

23 A. Maybe five years, somewhere around there;  
24 ten years. I don't know.

25 Q. You guys kind of run together?

1 A. Yeah. Yeah.

2 Q. Yeah. And how about Tim Martinez? Do you  
3 know him?

4 A. Yeah, I know him.

5 Q. This is Government's Exhibit 561. He's  
6 kind of in your group with Mr. Rodriguez; right?

7 A. Yeah, we're friends. We're brothers.

8 Q. You're housed with him now?

9 A. Yes.

10 Q. And you've known him for several years?

11 A. Yes.

12 Q. At some point were you housed with Mr.  
13 Rodriguez and Mr. Martinez at Southern New Mexico  
14 Correctional Facility?

15 A. In Las Cruces over here?

16 Q. Yes.

17 A. No.

18 Q. Do you know that they were housed at  
19 Southern?

20 A. Yes.

21 Q. And they were housed there with Javier  
22 Molina; right?

23 A. Yes.

24 Q. And let me ask you this. Does Mr.  
25 Rodriguez, who you looked at first -- does he have

1 kind of a signature move? Does he have an action  
2 that he likes to take when he's going after  
3 somebody?

4 A. Yeah. He likes to bite the ears off.

5 Q. He bites their ears off. How many times  
6 has Mr. Rodriguez bitten ears off, as far as you  
7 know?

8 A. I would think two, maybe; a couple of  
9 times. I'm not sure.

10 Q. A couple of times. Did he ever bite  
11 Javier Molina's ear off?

12 A. I'm not sure if that happened.

13 Q. So at some point Mr. Rodriguez and Mr.  
14 Martinez were down at the Southern New Mexico  
15 Correctional Facility. And neither one of them  
16 really liked Javier Molina; right?

17 A. I guess Blue did. Mario liked him.

18 Q. They didn't want him to be in charge?

19 A. That guy was kind of both of their  
20 friends, to tell you the truth.

21 Q. I know he was Mr. Martinez' friend.

22 A. Yeah.

23 Q. He was no friend of Mr. Rodriguez; right?

24 A. I've always believed he was, you know.

25 Q. And so when they were down there, did you



1 know if Mr. Rodriguez bit anybody's ears off at  
2 Southern?

3 A. No, I didn't hear nothing about that.

4 Q. Where did he bite ears off?

5 A. In the south, in Las Cruces. I mean the  
6 South in PNM, and at the North at PNM.

7 Q. When was that?

8 A. It's been a few years. I'm real bad with  
9 years, like I said. I would ballpark it maybe 2016,  
10 I'm thinking.

11 Q. You know who Mr. Lupe Urquizo is?

12 A. Yes.

13 Q. He's kind of part of your group, too,  
14 isn't he?

15 A. Yes.

16 Q. And anybody else in your group, your  
17 buddies?

18 A. Mauricio Varela. He's pretty close.

19 Q. Okay. And you guys have been kind of  
20 working to change the image of the SNM, haven't you?

21 A. We try.

22 Q. Yeah. What do you do to change the image  
23 of the gang?

24 A. Try to put things together, you know, and  
25 try put some kind of structure, and have people

1 working out, and just simple things, because it's in  
2 chaos. It was in chaos for a while.

3 Q. Right. And so -- but you're all working  
4 for the Government now; right?

5 A. Yes.

6 Q. All those people you just listed?

7 A. Yes.

8 Q. But you want to change the image of the  
9 gang, and that's part of what the attack when you  
10 tried to murder Paul Silva was about, was it not?

11 A. It was -- we were bumping heads.

12 Q. You wanted to show that you had the power,  
13 you had the control, and you could take him out.

14 A. One of the problems.

15 Q. Okay. One of the problems.

16 A. Yeah, there was a bunch of elements.

17 Q. That was one of the reasons that you  
18 attacked him.

19 A. Yes.

20 Q. The same thing for Mr. Varela?

21 A. Yes.

22 Q. So at some point you say that you told the  
23 Government that you were involved in the conspiracy  
24 to murder Javier Molina?

25 A. Yes.

1 Q. And you told them about these other guys?

2 A. Yes.

3 Q. Okay. And at some point you talked to the  
4 Government about meeting with Lupe Urquizo to get  
5 your stories straight; right?

6 A. We was trying to make sure -- we talked  
7 about the case, but he more or less wanted me to  
8 come over to do what he was doing, you know.

9 Q. He wanted you to tell the same story that  
10 he was telling, and he told you what that was.

11 A. We talked about what he talked about with  
12 the Government about. That was about it.

13 Q. He made it pretty easy for you to say the  
14 same thing; right?

15 A. No. I just wanted to know what he said  
16 about me, you know.

17 Q. Okay. And all these guys, your buddies,  
18 Mr. Rodriguez and Mr. Martinez and Mr. Varela and  
19 Mr. Urquizo, you were all facing a life sentence for  
20 the Molina case; right?

21 A. They were. I think they still are.

22 Q. Well, and you've told the jury that you're  
23 guilty on Molina, but you didn't get charged. So  
24 the Government has taken that off the table. None  
25 of you guys are facing life anymore; is that right?

1           A.    I would think they're not no more.   But I  
2 never got charged in the first place.

3           Q.    Yeah, you never even got charged.   When  
4 you --

5                   MR. BECK:   Objection, Your Honor,  
6 commenting on the evidence.   Was that a question?

7                   THE COURT:   Well, I think it was okay.  
8 But be careful.   Overruled.

9 BY MS. FOX-YOUNG:

10           Q.    Mr. Calbert, when you made the decision to  
11 go to work for the Government in August -- I think  
12 you said it was in August --

13           A.    I think so.

14           Q.    -- and you flushed that weapon down the  
15 toilet at Torrance County --

16           A.    Yes.

17           Q.    -- were you using a lot of methamphetamine  
18 around that time?

19           A.    No.

20           Q.    Remember you're under oath.

21           A.    Yes.

22           Q.    You weren't using any meth?

23           A.    No.

24           Q.    Okay.   And that wasn't making you at all  
25 paranoid?

1 A. No.

2 Q. Okay. You talked to the Government about  
3 all the shanks, all the weapons that were present at  
4 Torrance County, didn't you?

5 A. No, I didn't.

6 Q. Oh, you didn't?

7 A. I told them about mine.

8 Q. You don't remember telling the Government  
9 that there were lots of shanks that people made out  
10 of the metal from the lights at Torrance County?

11 A. I told them about the ones I made.

12 Q. Okay. Do you remember telling them that  
13 there were numerous homemade shanks at Torrance  
14 County?

15 A. Um, no.

16 Q. On August 22, 2017?

17 A. Yes.

18 Q. If I showed you a report that the  
19 Government made because, of course, the lawyers at  
20 this table were present for your interview; right?

21 A. They were present, yes.

22 Q. They were there when you told them all  
23 this stuff, when you talked about the shanks?

24 A. About mine.

25 Q. About your shank. If I showed you a

1 report that they made after the conversation that  
2 they had with you, would that refresh your memory?

3 A. I would like to see that.

4 MS. FOX-YOUNG: May I approach, Your  
5 Honor?

6 THE COURT: You may.

7 BY MS. FOX-YOUNG:

8 Q. Do you see this section right here?

9 A. I was telling them about mine. They might  
10 have misunderstood me.

11 Q. Oh, okay. Mr. Calbert, would you just  
12 repeat what you just said?

13 A. I said I was telling them about mine and  
14 what I made, and you know what I mean, they probably  
15 misunderstood.

16 Q. Okay. So maybe they got bad information  
17 when they said that there were numerous shanks at  
18 Torrance County?

19 A. Yeah, I guess.

20 Q. Okay. In any event, you know about other  
21 people who had weapons at Torrance County?

22 A. Yeah, I did.

23 Q. It was common --

24 A. Right.

25 Q. -- for people to have shanks at Torrance

1 County. And you talked to the Government about the  
2 fact that people could walk around freely at night  
3 around the pods at Torrance County; right? "People"  
4 being the inmates who were held there?

5 A. Yes. Yes.

6 Q. And it wasn't necessarily a safe place  
7 with all those weapons.

8 A. Yes.

9 Q. You talked a little bit about the rumors  
10 that circulate?

11 A. Yes.

12 Q. And I think you talked about what happens  
13 to somebody who is thought be cooperating?

14 A. Yes. Yes.

15 Q. What happens to them?

16 A. They get hit, they get stabbed, you know.

17 Q. They're in danger of getting killed. Are  
18 you aware that there were rumors floating around  
19 among a number of inmates that Mr. Perez had  
20 cooperated?

21 A. Yes. What it was, in the computer he  
22 had -- I guess he had a enemy list.

23 Q. Okay. And so he was in danger, just like  
24 anybody else who was thought to have cooperated?

25 A. I'm pretty sure could have been.

1 Q. Do you think he talked to you at Torrance  
2 County?

3 A. Um-hum.

4 Q. And told you that he had wanted credit,  
5 that he didn't want anything to do with it anymore?

6 THE COURT: You'll have to speak --

7 THE WITNESS: I'm sorry.

8 BY MS. FOX-YOUNG:

9 Q. It's a little hard to pick up. I'll ask  
10 you again --

11 THE COURT: I'll tell you what. Do you  
12 think we better pick this up --

13 MS. FOX-YOUNG: One more question, Your  
14 Honor, and I'll wrap up?

15 THE COURT: Go ahead.

16 BY MS. FOX-YOUNG:

17 Q. You said you talked to Mr. Perez. You  
18 described the fact that he was unable to physically  
19 defend himself; right?

20 A. Yes.

21 Q. And had trouble getting around; right?

22 A. Yes.

23 Q. And when -- you say you talked to him in  
24 the shower and he told you that he wanted credit;  
25 right?



1 A. Right.

2 Q. And you knew at that time that there were  
3 rumors swirling that Mr. Perez had cooperated.

4 A. Yeah, pretty much.

5 Q. Yeah. And so it was reasonable for him to  
6 say something to protect himself, to maybe to take  
7 credit for something that he hadn't done. Is that  
8 right?

9 MR. BECK: Objection, Your Honor, calls  
10 for speculation.

11 MS. FOX-YOUNG: I think if the witness  
12 knows.

13 THE COURT: If he knows. But ask him if  
14 he knows before you ask him the question.

15 BY MS. FOX-YOUNG:

16 Q. Well, you told me that you know that when  
17 rumors are circulating, people are in danger. Tell  
18 me, if you know, if it's reasonable, then, for  
19 somebody to take credit for something that maybe  
20 they didn't do, to protect themselves.

21 A. No, because -- they probably, yeah, but  
22 there's -- I've heard, you know what I mean, it's  
23 been around that that's what he's been saying from a  
24 long time already, you know.

25 Q. And it's been around that somebody was

1 going to move on him, hasn't it?

2 A. No.

3 MR. BECK: Objection, Your Honor.

4 Foundation and hearsay.

5 THE COURT: I think we do have a hearsay  
6 problem.

7 MS. FOX-YOUNG: All right, Your Honor.

8 THE COURT: Do you want to quit for the  
9 evening?

10 MS. FOX-YOUNG: Yes, Your Honor.

11 THE COURT: All right.

12 Because we're going to take our first  
13 weekend break during the trial, I want to remind you  
14 of a few things that are especially important.  
15 Until the trial is completed, you're not to discuss  
16 the case with anyone, whether it's members of your  
17 family, people involved in the trial, or anyone  
18 else, and that includes your fellow jurors. If  
19 anyone approaches you and tries to discuss the trial  
20 with you, please let me know about it immediately.

21 Also, you must not read or listen to any  
22 news reports of the trial. Again, don't get on the  
23 internet and do any research for purposes of this  
24 case.

25 And finally, remember that you must not

1 talk about anything with any person who is involved  
2 in the trial, even if it doesn't have anything to do  
3 with the trial.

4 If you need to speak with me, simply give  
5 a note to one of the court security officers or Ms.  
6 Standridge.

7 I probably won't be repeating these next  
8 week, but do keep them in mind each time we take a  
9 break for the evening or the weekend. Just keep  
10 them in mind.

11 Looks like about eight of us are going to  
12 make the same road. Not all of us to Hobbs, but  
13 dropping people off along the way; or Carlsbad or  
14 Artesia. Everybody be safe on their travels. My  
15 prediction is that Brady is going to get his sixth  
16 ring and 28/21. So we'll see how smart I am on  
17 Monday. Right? I'm going to root for Philadelphia,  
18 though. But I don't think we'll get it done.  
19 That's pretty hard to say if you're a Cowboy fan,  
20 but I'm going to root for Philadelphia.

21 Y'all have a good trip. Have a good  
22 weekend. Get some rest. See you at 8:30 on Monday  
23 morning.

24 (The jury left the courtroom.)

25 THE COURT: All right. Y'all have a good

1 weekend.

2 MR. LOWRY: Judge, at lunch I was going to  
3 make my record on the objections and I haven't been  
4 able to. May I?

5 THE COURT: Okay.

6 MR. LOWRY: Your Honor, we wanted to join  
7 Ms. Jacks' objections throughout the day, and rather  
8 than gobbling up courtroom time with the jury in  
9 here, I wanted to put that on the record, so Mr.  
10 Baca would join those on both Fifth and Sixth  
11 Amendment grounds. And Your Honor, I just think --  
12 I'll look at it over the weekend. But I've just --  
13 given the cross inadmissibility of the evidence and  
14 the limiting instructions and some of the statements  
15 that were made, we're going to consider moving for a  
16 mistrial.

17 THE COURT: All right. All right, y'all  
18 have a good weekend.

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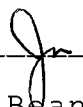
1 UNITED STATES OF AMERICA

2 STATE OF NEW MEXICO

3  
4 C-E-R-T-I-F-I-C-A-T-E

5 I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,  
6 Official Court Reporter for the State of New Mexico,  
7 do hereby certify that the foregoing pages  
8 constitute a true transcript of proceedings had  
9 before the said Court, held in the District of New  
10 Mexico, in the matter therein stated.

11 In testimony whereof, I have hereunto set my  
12 hand on this 3rd day of February, 2019.

13  
14   
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